

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Cr. Rev. Appln. No. S – 04 of 2019

Date	Order with Signature of Hon’ble Judge
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For hearing of case

- 1. For orders on MA No.295/2019
- 2. For hearing of main case

02.12.2019

Mr. Mushtaque Ahmed Shahani Advocate for the Applicant
Mr. Sikander Ali Junejo Advocate for the private respondents
Mr. Aftab Ahmed Shar, Addl: PG for the State
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Aftab Ahmed Gorar, J:- Through instant Criminal Revision application, the applicant/complainant has impugned the order dated 28.12.2018 passed by learned Additional Sessions Judge-IV (Hudood) Sukkur, whereby his direct complaint for prosecution of the private respondents under Section 3, 4 and 7 of the Illegal Dispossession Act, 2005, has been dismissed.

2. The facts in brief necessary for disposal of instant Criminal Revision Application are that the applicant/complainant filed direct complaint against the private respondents for their prosecution for having committed an offence punishable under Section 3, 4 and 7 of Illegal Dispossession Act, 2005. It is stated that the applicant/complainant was in possession of (2-02) Acres out of Survey No.101 (7-30) Jerabs situated in Deh Farash, Tapo Arain,

Taluka New Sukkur, whereas, it was the property of his father and after his death, the property was devolved amongst two brothers. The applicant / complainant used to cultivate the said land without any hindrance. It is further stated that about three years back, it was 3:00 pm, when the applicant / complainant along with his witnesses Ghous Bux, Shahid were available at the said land, there came private respondents duly armed with weapons and dispossessed him forcibly and issued threats of murder, as such occupied an area of (2-02) Acres, the private respondents being the land mafia having political support good terms with *gundas*. The complainant filed the direct complainant with the prayer that the private respondents have committed a cognizable offence therefore, they may be prosecuted under the provisions of the Illegal Dispossession Act, 2005, for restoration of possession of the aforesaid landed property.

3. Learned Additional Sessions Judge (Hudood) Sukkur, after calling the reports from the Mukhtiarkar (Revenue) New Sukkur as well as SHO Police Station Abad Sukkur, dismissed the direct complaint vide his order dated 28.12.2018, which is impugned by the applicant/complainant before this Court by way of instant Criminal Revision Application.

4. Learned counsel for the applicant / complainant contended that he being owner of the landed property admeasuring (2-02) Acres out of S.No.101 situated in Deh Farash, Tapo Arain, Taluka New Sukkur has been dispossessed forcibly by the private respondents,

whereas, the reports furnished by the Mukhtiarkar (Revenue) New Sukkur and SHO Police Station Abad Sukkur are also in favour of the applicant / complainant; that the learned trial Court without considering the fact that he being owner has been dispossessed by the private respondents has dismissed the criminal complaint of the applicant / complainant, but merely observed that the applicant / complainant wants to convert the civil litigation into a criminal; that the private respondents have forcibly dispossessed the applicant / complainant, as such have committed a criminal offence, therefore, they are liable to be prosecuted under the Illegal Dispossession Act, 2005. He lastly contended that the impugned order passed by the learned trial Court is not sustainable, hence the same may be set-aside and the direct complaint shall be brought on record and private respondents may be prosecuted in accordance with law. In support of his contentions, he has relied upon the case of ***Daim Ali Khan v. Mushtaque Ali alias Farooque and 4 others (2017 Y L R 1456)***.

5. Learned counsel appearing for the private respondents as well as learned DPG for the State prayed for dismissal of the instant Criminal Revision Application by contending that the trial Court has rightly dismissed the complaint of the applicant / complainant as the private respondents are co-sharer being the purchasers of the property and are in possession thereof and paying the land revenue regularly; that the applicant/complainant has come in greed, therefore, he after three years of the alleged dispossession has filed the instant direct complaint just to develop undue pressure upon the

private respondents so that they may return the land to him, hence has filed a false complaint; that the date has not been mentioned in the memo of complaint, which clearly shows *mala fides* on the part of the applicant / complainant; that one Naseeruddin, brother-in-law of the applicant / complainant has sworn affidavit in which he has stated that his father was one of the co-sharers in the property, whereas, in the year 1993 the applicant / complainant had sold out an area of (1-2 ½) Acres to the private respondent No.1, whereas, another villager namely Muhammad Ayoub Bhutto has also sworn his affidavit and has stated the same facts regarding sale of the land by the appellant/complainant to the private respondent No.1; that the private respondents are respectable persons of the area and are not the land grabbers or *Qabza* mafia, the allegations of the applicant / complainant are vague in nature. They lastly contended that the instant Criminal Revision Application is liable to be dismissed.

6. I have considered the arguments of the learned counsel for the respective parties and perused the record. The Illegal Dispossession Act 2005 is a special legislation to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by the land grabbers or *Qabza* group. In the present matter, admittedly, the applicant / complainant is shareholder upto 25% in the disputed survey numbers, which fact is mentioned in his report by the Mukhtiarkar (Revenue) New Sukkur, whereas, the private respondent No.1 claimed to have purchased some area of the land from the applicant / complainant in the year

1993 and has paid the land revenue to the Government. In this regard, he has placed on record such land revenue receipts to show that he is legally in possession of the land and does not come within the definition of land grabber and *Qabza* mafia. Furthermore, the applicant / complainant in his direct complainant has stated that he was dispossessed in the year 2015 but no such specific date has been mentioned regarding such dispossession, whereas, he has filed instant direct complaint in the year 2018, meaning thereby that he has remained silent for about three years, which gives the presumption of dragging the private respondents into criminal litigation. The case-law relied upon by learned counsel for the applicant / complainant is on distinguishable facts, hence cannot be relied upon.

7. In view of the above, it could be concluded safely that no illegality is committed by learned trial Court while passing the impugned order which may justify making interference with it by this Court by way of instant Criminal Revision Application, it is dismissed accordingly along with listed application.

Judge