

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Rev. Application No. S – 33 of 2018

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

1. For orders on office objection at flag 'A'
2. For hearing of main case

03.02.2020

Mr. Shahnawaz Waseer Advocate for the Applicant
Mr. Parmanand Advocate along with private respondents
Mr. Khalil Ahmed Maitlo, DPG for the State
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Amjad Ali Sahito, J; Through instant Criminal Revision application, the applicant/complainant has impugned the order dated 06.02.2018 passed by learned Additional Sessions Judge-II Khairpur, whereby his direct complaint for prosecution of the private respondents under Section 3 and 4 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 and 4 of Illegal Dispossession Act, 2005. It is stated that the applicant/complainant being the co-sharer with his brother Niaz Hussain the private respondent No.1 in the landed property (15-07) Acres, situated in Deh Sorah, Taluka Nara as per revenue record entry No.597 dated 23.8.2008, whereas, on 05.4.2016 he along with his brother Mir Hassan and maternal nephew Liaquat Hussain were harvesting the wheat crop, it was 12:05 noon, time the private respondents duly armed with weapons came there and forcibly dispossessed him from his landed property and cut down the trees therefore, he filed the direct complainant with the prayer that the private respondents have committed a cognizable offence, hence they may be

prosecuted under the Provisions of Sections 3 and 4 of the Illegal Dispossession Act, 2005, for restoration of possession of the aforesaid landed property

3. Learned Additional Sessions Judge-II, Khairpur after calling the reports from the Mukhtiarkar (Revenue) Nara and SHO Police Station Sorah, dismissed the direct complaint vide his order dated 06.02.2016, which is impugned by the applicant/complainant before this Court by way of instant Criminal Revision Application.

4. It is contended by learned counsel for the applicant / complainant he is co-sharer and owner of the property from which he has been dispossessed forcibly by the private respondents, whereas, the order passed by learned trial Court is not speaking one, whereas, the report of Mukhtiarkar (Revenue) Nara is also in favour of the applicant/complainant; that the learned trial Court without considering the fact that the applicant/complainant being owner has been dispossessed by the private respondents. He lastly prayed for setting-aside of the impugned order.

5. Learned DPG for the State and learned counsel appearing for the private respondents contended that the applicant/complainant and the private respondents being the members of one and same family are the co-sharers in the disputed landed property, being brothers inter se, therefore, the question of dispossession does not arise; that the private respondent No.3 Ali Hassan has already filed F.C Suit No.207/2016 against the present applicant / complainant before the Court of learned 1st Senior Civil Judge Khairpur for Special Performance of Contract and Permanent Injunction; that the applicant/complainant has tried to convert the civil litigation into criminal with in intent to drag the private respondents in false criminal litigations; that there is nothing on record that the private respondents are land grabbers or Qabza group, hence the provisions under the Illegal Dispossession Act are not applicable in

the present case. They lastly contended that the impugned order passed by the learned trial Court is very much speaking, hence the same is liable to be maintained.

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. Admittedly, the private respondents as well as the applicant / complainant are the co-sharers in the disputed landed property, hence the facts stated by the applicant / complainant do not fall within the definition of land grabbers / Qabza group. The applicant/complainant as well as the private respondents are related to each other being members of one and same family. The parties have already sued each other by filing civil suit, whereas, the applicant/complainant in order to convert the civil litigation into a criminal litigation with intention to drag the private respondents into dual litigation i.e. civil and criminal. In this regard, reliance upon the case of ***Bashir Ahmed vs. Additional Sessions Judge, Faisalabad and 4 others (P L D 2010 SC 661)***, wherein the Honourable Apex Court has held as under;

“It has been held by a Full Bench of Lahore High Court, Lahore in the case of Zahoor Ahmed and 5 others vs. The State and 3 others PLD 2007 Lah. 231 that the Illegal Dispossession Act, 2005 has no application to cases of dispossession between co-owners and co-sharers and also that the said Act is not relevant to bona fide civil disputes which are already sub-judice before civil or revenue Courts. It had also been declared by the Full Bench of the Lahore High Court, Lahore in that case that the Illegal Dispossession Act, 2005 was introduced in order to curb the activities of Qabza groups / property grabbers and land mafia. It has been conceded before us by the learned counsel for the petitioner that no material is available with the petitioner to establish that respondents Nos.2 to 4 belonged to any Qabza group or land mafia or that they had the credentials or antecedents of being property grabbers.....In the circumstances of this

case mentioned above we have entered an irresistible impression that through filing of his complaint under the Illegal Dispossession Act, 2005 the petitioner had tried to transform a bona fide civil dispute between the parties into a criminal case so as to bring the weight of criminal law and process to bear upon respondents Nos. 2 to 4 in order to extract concession from them. Such utilization of the criminal law and process by the petitioner has been found by us to be an abuse of the process of law which cannot be allowed to be perpetuated.”

7. In view of the above, the impugned order dated 06.02.2016 passed by learned Additional Sessions Judge-II Khairpur, is well-reasoned and does not call for any interference by this Court. Consequently, the instant Criminal Revision Application is dismissed.

Judge

ARBROHI