

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Rev. Appln. No. S – 109 of 2019

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

1. For orders on office objection
2. For hearing of main case

27.01.2020

Mr. Mushtaque Ahmed Shahani Advocate a/w applicant
 Ms. Amber Iqbal Advocate for private respondent No.1
 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 30.07.2019 passed by learned Additional Sessions Judge Pano Akil, 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 owner of land bearing S.No.170 admeasuring 17 ghuntas was forcibly dispossessed by the private respondents on 18.05.2019 at about 5:00 pm duly armed with deadly weapons, therefore, he 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 Sections 3 and 4 of the Illegal Dispossession Act, 2005, for restoration of possession of the aforesaid landed property

3. Learned Additional Sessions Judge, Pano Akil after calling the reports from the Mukhtiarkar (Revenue) Sobhodero, dismissed the direct complaint vide his order dated 30.07.2019, 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 and is based on surmises and conjectures and the same has been passed in hasty manner only relying upon the report of the Mukhtiarkar (Revenue) that the private respondent Raheem Bux is in possession of the disputed land since long; that the learned trial Court without considering the fact that the applicant/complainant being owner has been dispossessed by the private respondents, but has observed that the applicant/complainant is co-sharer in the property. He lastly prayed that the private respondents have committed a cognizable offence, therefore, they are liable to be prosecuted under the Law. He has relied upon the cases of ***Shaikh Muhammad Naseem vs. Mst. Farida Gul (2016 S C M R 1931) and Salamuddin vs. SHO P.S Halani and another (2016 Y L R 2760) and Ali Murad alias Jameel vs Muhammad Usman and others (2017 Y L R Note-42).***

5. Learned DPG for the State and learned counsel appearing for the private respondent No.1 prayed for dismissal of the instant Criminal Revision Application by contending that the applicant/complainant and the private respondents being the co-sharers in the disputed property, therefore, the question of dispossession does not arise; that the reports of

the Mukhtiarkar (Revenue) as well as SHO Police Station Mubarakpur are in favour of the private respondents; that the applicant / complainant wants 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. The operative part of the impugned order is reproduced herein below;

“After hearing of the counsel for the complainant and on perusal of memo of complaint so also investigation report submitted by the SHO of P.S Mubarakpur and report submitted by the Mukhtiarkar Pano Aqil. It appears that the complainant admittedly is co-sharer of the agricultural land bearing S.No.170 (01-17) acres and the said survey number is in possession of Raheem Bux Chachar since long. From the perusal of investigation report submitted by the SHO P.S Mubarkarpur it shows that no such illegal occupation has been made as the one Shahmir Ali Chijjan had sold out the said land to proposed accused Raheem Bux in the year 1994. On perusal of report submitted by the Mukhtiarkar Pano Aqil wherein transpired that the land in question is in possession of proposed accused Raheem Bux since long. In this regard circumstances do not reflect that

the illegal dispossession has been made by the proposed accused. As such no case of Illegal Dispossession Act is made-out, hence, the cognizance cannot be taken under the circumstances. Consequently, the direct complaint stands dismissed accordingly.”

7. 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 in order to convert the civil litigation into a criminal with an intention to drag the private respondents wants to drag them in criminal litigation, thus has filed the instant direct complaint. 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.”

8. 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. The case law relied upon by learned counsel for the applicant/complainant is on distinguishable facts and circumstances, hence cannot be relied upon.

Judge

ARBROHI