

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Cr. Revision Application No.S-218 of 2021

1. For orders on office objections.
2. For hearing of main case.
3. For hearing of MA-14761/2021.

Date of hearing : 17.11.2022
Date of judgment : 17.11.2022

Appellants Syed Bachal : Through M/s. Muhammad
Shah Lakyari and Asghar Sachal R. Awan, Advocate
Ali Shah

Respondent No.1 : Through Syed Tarique Ahmed
Mumtaz Ali Shah.

Ali Raza : Through Mr. Ghulamullah
Chang, Advocate

The State : Through Ms. Sana Memon,
Assistant P.G.

ORDER

Muhammad Saleem Jessar, J.- Instant criminal revision application has been directed against order dated 03.12.2021 passed by learned Additional Sessions Judge, Hala (Trial Court), whereby third application under Section 265-K Cr.P.C filed by the applicants was declined.

2. The applicants who are nominated accused in I.D Complaint No.41 of 2019 are alleged to have illegally dispossessed the respondent Mumtaz Ali from agricultural land admeasuring about 22-21 acres consisted upon Survey No.154, 155 and 159 Deh Fatehpur alongwith Otaq (out house) situated at the Chowk (square) of said survey numbers. The respondent/complainant also owns 50-38 acres land in same Deh Fatehpur vide Survey Nos.156, 160, 161, 162, 163, 169 and 151. Out of

above survey numbers, 20 acres land was ready for cultivation of the wheat crop. On 30.10.2019 at 4:00 p.m. the respondent/complainant was present alongwith his Manager Malhar and Arab in the Otaq; meanwhile the applicants/accused Syed Bachal Shah Lakyari and Asghar Ali Shah with rifles and 9/10 other outlaws having K.Ks and rifles came there and started indiscriminate firing; thereby forcibly dispossessed the respondent from 73 acres land including movable property viz. cattle, sheeps and buffalos total 25 in number as well 115 bags of wheat and fertilizer and agricultural machinery. The respondent approached to SHO P.S Saeedabad, who avoided taking action. The SHO issued letter to Mukhtiarkar, who in response verified title of the land vide his office letter bearing No.AM/LIT/186 of 2019 dated 04.11.2019, even then the SHO did not take action as the applicants/accused are said to be maternal cousins of one Waliullah Dal, the then A.I.G Police Sindh; therefore, the respondent filed I.D Complaint No.41 of 2019 (Re: Mumtaz Ali v. Bachal and others), which after completion of codal formalities was admitted and brought on record. A formal charge against the applicants was framed to which they pleaded not guilty and claimed to be tried. After framing of charge the respondent/complainant produced his witnesses namely Malhar and Arab who were examined; besides the respondent / complainant has also been examined; however, his examination-in-chief was reserved for want of production of certain documents. The applicants instead of proceeding with trial had also filed Criminal Transfer Application No.S-53 of 2021 before this Court which was dismissed as not pressed in terms of order dated 11.11.2021. However, the directions were issued to trial Court to decide the fate of third application under Section 265-K Cr.P.C and then ultimately their application was turned down vide impugned order.

3. The applicants/accused have filed instant revision application, seeking restraining orders dated 10.01.2022; hence, no further progress has been effected in trial.

4. Mr. Muhammad Sachal R. Awan, learned Counsel for applicants and Mr. Ghulamullah Chang, learned Advocate for Ali Raza argued that applicants are co-sharers of the land in dispute; besides, civil litigation is pending adjudication before the civil forum; therefore, the applicants have committed no offence; hence, by granting this revision application impugned order may be set aside and the complaint pending before the trial Court may be quashed and applicants may be acquitted of the charges. They next submitted that one Ali Raza is the person who dispossessed the respondent and not the applicants; therefore, the complainant has wrongly arrayed the applicants as accused. Before concluding their arguments, learned Advocates filed Photostat copy of memo of I.D Complaint No.41 of 2019 taken from its true copy issued by the trial Court on 18.12.2020; taken on record. In support of their contentions, learned Counsels have placed reliance upon the cases of Mst. INAYATAN KHATOON and others v. MUHAMMAD RAMZAN and others (2012 SCMR 229) and WAQAR ALI and others v. The STATE through Prosecutor/Advocate-General, Peshawar and others (PLD 2011 Supreme Court 181)

5. Syed Tarique Ahmed Shah, learned Advocate for the respondent/complainant opposed the revision application on the ground that trial has commenced and almost entire set of witnesses has been examined except the cross-examination of the complainant; therefore, it will be appropriate for the parties to proceed with trial instead of pressing this revision application. He further argued that three consecutive applications under Section 265-K Cr.P.C were declined by the trial Court; though no fresh ground was accrued to the accused for filing of subsequent applications. In rebuttal of arguments of learned Counsels for applicants, learned Counsel for

respondent argued that the incident of instant case occurred on 30.10.2019 and complaint was filed before the Court of Sessions on 20.11.2019; whereas, said Ali Raza was put in possession by the applicants themselves on 30.11.2019 in order to create third party interest, so that respondent/complainant may be defeated; hence, the applicants are main perpetrators behind the scene who are still enjoying illegal possession of the land in dispute for which they are not entitled. Mr. Shah further argued that there is no legal bar, if the civil proceedings are pending then no criminal case could be proceeded or initiated; hence, Mr. Shah submitted that trial is at the verge of conclusion; therefore, it will be appropriate for the applicants to proceed with the trial instead of pressing instant revision application. In support of his contentions, learned Counsel for respondent has placed reliance upon the case of THE STATE through Advocate-General, Sindh High Court of Karachi v. Raja ABDUL REHMAN (2005 SCMR 1544).

6. Heard and perused the record.

7. There is no denial that the applicants/accused are nominated in complaint with specific allegations. The applicants have not urged any ill-will or animosity against respondent rather have admitted their claim to the extent of co-sharer; hence, the contention of learned Counsel for applicants that being co-sharer the applicants cannot be prosecuted under this Act is concerned, which carries no weight on the ground that applicants seems to be highly influential persons of the area having relationship with one senior police officer; therefore, the SHO concerned submitted negative report before the trial Court on which basis the accused have repeatedly filed applications under Section 265-K Cr.P.C, seeking their premature acquittal. Being co-sharer the possibility of the fact that the applicants might have intended to take lion's share or being influential persons wanted to deprive the respondent/complainant of his legitimate right/due share, cannot be denied. Mere pendency of

a civil litigation between the parties is no ground for the applicants to have sought acquittal at premature stage particularly in a case of like nature. These proceedings are outcome of the Illegal Dispossession Act, 2005, which being special enactment has to be proceeded accordingly. It is well settled principle of law that criminal proceedings can run side by side with the civil litigation; hence, this argument of learned Counsel for the applicants has also devoid of its merit. The complainant examined two witnesses; besides complainant has also been examined; however, his examination-in-chief has been kept reserved for want of production of certain documents which the applicants could not produce due to pendency of instant revision application as well restraining orders passed over it. It is also well settled law that once the trial has commenced then no interlocutory order in favour of either party may be passed because of doing so a presumption would be drawn that one of the parties has been favoured or has been extended helping hand. Though there is no bar for an accused to file an application under Section 249-A Cr.P.C or 265-K Cr.P.C at any stage of the trial of the case, yet the facts and circumstances of the prosecution case will have to be kept in mind and considered in deciding viability or feasibility of filing an application at any particular stage. The special or peculiar facts and circumstances of a prosecution case may not warrant filing of an application at a stage when the entire prosecution evidence or some of the prosecution witnesses had been examined and the case is at the verge of conclusion or fixed for recording of statement of the accused under Section 342 Cr.P.C. In case of BASHIR AHMAD v. ZAFAR-UL-ISLAM and others (PLD 2004 Supreme Court 298) and MUHAMMAD SHARIF v. The STATE (PLD 1999 Supreme Court 1063) the Honourable Supreme Court of Pakistan did not approve decision of a criminal case on an application under Section 249-A Cr.P.C on allied or similar provisions of law namely, law, Section 265-K Cr.P.C and observed that usually a criminal case

should be allowed to be disposed on merits after recording of the prosecution evidence, statement of the accused under Section 342 Cr.P.C or under Section 340(2) Cr.P.C if so desired by the accused and hearing the arguments of the counsel of the parties and that the provisions of Section 249-A and 265-K as well Section 561-A Cr.P.C should not normally be pressed into action for decision of fate of a criminal case without recording evidence.

8. The upshot of the above reasons and discussion is that the impugned order dated 03.12.2021 is well reasoned and no illegality or any material irregularity has been committed by the trial Court, which may warrant interference by this Court. Consequently, instant revision application is hereby dismissed alongwith pending application(s) and the interim order dated 10.01.2022 is hereby recalled/vacated. However, the learned trial Court is directed to conclude the trial within a period of 02(two) months' time under intimation to this Court.

JUDGE

Shahid