

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Misc. Application No. 488 of 2023**

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<i>Date</i>	<i>Order with Signature of Judge</i>
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1. For orders on office objection.
2. For hearing of Main Case.
3. For hearing of M.A No.8470/2023.

**08.08.2023**

Syed Arshad Hussain, Advocate for the Applicant.  
Mr. Zahoor Shah, Addl. Prosecutor General, Sindh.  
Mr. Ghulam Akbar Uqaili, Assistant Advocate General, Sindh.

**ORDER**

**MUHAMMAD SALEEM JESSAR, J:-** Through instant Criminal Misc. Application, applicant has called in question the legality of order dated 17.07.2023 (impugned order) passed by learned 3<sup>rd</sup> Addl. Sessions Judge, Karachi (Central) vide Complaint No.26 of 2023 [*re-Mst. Asmat Samreen Versus SHO, New Karachi and others*], whereby learned trial Court instead of recording statement of the applicant / complainant and taking cognizance of the offence, has directed him to provide set of documents to the proposed accused.

Learned counsel for the applicant submits that applicant has filed a Complaint bearing No.26 of 2023 [*re-Mst. Asmat Samreen Versus SHO, New Karachi and others*] in terms of the provisions of Illegal Dispossession Act, 2005; however, the trial Court / 3<sup>rd</sup> Addl. Sessions Judge, Karachi (Central) instead of recording her statement and taking cognizance, has directed her to provide a set of documents to the proposed accused through order dated 17.07.2023 which is being impugned by way of this application. Learned Addl. P.G, Sindh as well as Assistant A.G, Sindh present, submit that per provisions of the Illegal Dispossession Act, 2005, the trial Court is required to record statement of the applicant / complainant in the first instance and then has to issue process in terms of section 200 & 204 Cr.P.C aims to secure attendance of the accused, therefore, impugned order seemingly is illegal.

It is settled law that at the time of preliminary proceedings in terms of Section 200 Cr.P.C participation of proposed accused is not required even they have given no right of audience during preliminary proceedings. Reliance can be placed upon the cases of *AZMAT BIBI and another Versus ASIFA RIAZ and 3 others (PLD 2002 Supreme Court 687)* & *SHARMILA FAROOQUI Versus THE STATE (2009 MLD 850)*. Accordingly, instant Criminal Misc. Application is hereby allowed. Consequently,

impugned order dated 17.07.2023 passed by learned 3<sup>rd</sup> Addl. Sessions Judge, Karachi (Central) is set-aside. The trial Court is directed to record statement of the applicant as required by the provisions contained under Illegal Dispossession Act, 2005 and after taking cognizance, proceed with the case in accordance with law.

***JUDGE***

Zulfiqar/P.A