

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S – 68 of 2024

Date of hearing	Order with signature of Judge
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Hearing of case

1. For orders on office objection at flag 'A'
2. For hearing of main case
3. For hearing of MA No.713/2024 (S/A)

14.05.2024

Mr. Ubedullah Malano, Advocate along with Applicant
Syed Sardar Ali Shah Rizvi, Additional PG for the State

ORDER

Muhammad Iqbal Kalhoro, J;- An FIR was registered by ASI Zamir Ahmed incharge security squad of Sessions Judge, namely Zahid Hussain Maitlo, posted at District Shahdadkot at Kamber on 24.04.2022, alleging that he was informed by the said Sessions Judge about applicants along with three unknown accused illegally occupying his plot and on his resistance issuing threats to him of dire consequences by pointing out pistols; further alleging that they had also occupied his land S.No.825 situated in deh Gabchi, tapa Kolab Jeal, Taluka Kingri, District Khairpur. After registration of such FIR, the case was investigated and challan was submitted accordingly. Before the trial Court, applicants moved an application U/s 249-A CrPC, which was dismissed vide order dated 11.10.2022. Against which, applicants filed CrI. Revision No.S-39/2023, which too has been dismissed vide impugned order dated 08.12.2023 by Additional Sessions Judge-II, Khairpur.

Learned defence counsel has submitted that applicant No.1 is a real uncle, whereas applicants No.2 and 3 are real cousins of the said Sessions Judge. He was brought up by applicant No.1,

as his father had died when he was still a child. The property is ancestral on which certain dispute between the parties is going on. The said Sessions Judge had filed a Revenue Appeal before the Assistant Commissioner, Kingri, but he lost the same and it has been held that applicant No.1 is the real owner of the agricultural land S.No.825. Learned counsel further submits that in the record-of-rights, the disputed plot stands in the name of applicants No.1 and he is in occupation since onset. He next submits that evidence of complainant ASI Zamir Ahmed has been recorded in the trial and he has not identified the applicants as accused of this case. He further submits that neither said Zahid Hussain Maitlo or any of his servants, relatives are made witnesses in this case. The entire case is based on hearsay evidence and there is no chance that charge will be established against the applicants and conviction awarded. Hence the trial is a nullity in the eyes of law.

Learned Additional PG for State has conceded to the facts and grounds raised in defence and submits that an attempt has been made to convert civil litigation into a criminal case. Zahid Hussain Maitlo, the Sessions Judge, who claims to have seen incident of occupation of his plot and land, has not even condescended to become a witness in the case.

I have considered arguments of parties and perused material available on record. I agree with the stance taken by learned defence counsel and learned Additional PG for the State that in this case, the charge is not likely to be proved and there is no probability of conviction being recorded against the applicants, who are close relatives of Zahid Hussain, District and Sessions Judge, on whose behalf the FIR was registered by a

person who had no concern with the dispute and was not an eyewitness, had no firsthand information about the incident either. The said Zahid Hussain has alleged that his plot and agricultural land have been occupied by the applicants, but without disclosing that applicant No.1 is his real uncle and applicants No.2 and 3 are his real cousins and the disputed property is ancestral one. Further, evidence of complainant has been recorded and he has not supported the prosecution case qua identity of the applicants. The other witnesses cited in the case are not the eyewitnesses. They are the ones who in the investigation performed ancillary role viz mashirs etc. Their evidence is not likely to enhance status of prosecution case or establish the charge against the applicants. History of civil litigation before revenue hierarchy between the parties in respect of the same land is an extra circumstance putting down damp over the charge. Therefore the same cannot be overlooked in the peculiar circumstances of the case.

Consequently, I allow this miscellaneous application and quash proceedings of Criminal Case No.109/2022 (*Re- The State vs. Gul Hassan and others*) emanating out of Crime No.17 of 2022 under sections 427, 447, 506/2, 148 and 149 PPC registered at Police Station, Ahemdpur pending before Civil Judge and Judicial Magistrate, Pir-Jo-Goth.

Accordingly, this miscellaneous application along with listed application is disposed of in the above terms.

Judge

ARBROHI