

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Misc. Application No.278 of 2023
[Aijaz Ali vs. The State and others]

Date	Order with signature of Judge
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FOR HEARING OF MAIN CASE.

Mr. Ahmed Ali Ghumro, Advocate for the applicant.
Advocate for Respondent No. 3.
Ms. Seema Zaidi Addl. Additional Prosecutor General Sindh.

ARSHAD HUSSAIN KHAN J., Through present Cr. Misc. Application, the Applicant challenged the order dated 03.04.2023, passed by learned Sessions Judge-III Karachi [East] in Cr. I.D. Complainant No. 166/2022 whereby the Application seeking acquittal under Section 265-K Cr.P.C. was dismissed.

2. Learned counsel for the applicant reiterating the contents of his application has contended that the learned Additional Sessions Judge while passing the impugned order has failed to apply his judicious mind and consider the material available on the record. He has further contended that the respondent / complainant was not the owner of the property in question i.e. Penthouse but the occupier of the subject property in terms of Section 3 of the Illegal Dispossession Act and the respondent has no locus standi to file the complaint and from the police enquiry it appears that the complainant / respondent has already sold out the subject flat to third person Rafiul Islam in the year 2022 as such not being the owner of the subject property cannot file the complaint under Illegal Dispossession Act. He has further contended that the learned Additional Sessions Judge has failed to take into account the material fact that the applicant was in possession of the property by virtue of sale agreement and the payment made in terms thereof. He has further contended that the dispute is purely of civil nature and in this regard the applicant has also filed a civil suit, which is pending adjudication. It has also been contended that the learned Additional Sessions Judge has also failed to take into account the fact that respondent No.3 tried to convert the civil litigation into a criminal one as such the proceedings against the present applicant is liable to be quashed and the applicant is liable to be acquitted from the present case. It is also contended that the learned Additional Sessions Judge has also failed to take into account the material fact that the respondent / complainant failed to produce any permission from the SBICA in respect of the construction of the Penthouse. He has further submitted that the respondent has only permission to construct the ground + 4 floor. Lastly, he has contended that the learned Additional Sessions Judge has failed to take into account the police enquiry report in its true perspective as such the impugned order is not sustainable under the law and liable to be set aside.

Learned counsel appearing on behalf of the respondent / complainant while controverting the contention of the learned counsel for the applicant has supported the impugned order. He has submitted that there is no privacy of contract between the respondent / complainant and the present applicant as none of the documents has been produced along with the present application, which could show that either any agreement of sale in respect of the subject property was entered into between the respondent and the applicant or any payment was made by the present applicant for the alleged purchase of the subject property. He while referring to the police enquiry submitted before the learned Additional Sessions Judge submits that in the said enquiry report it has clearly been mentioned that the owner of the property is respondent and the applicant on 06.09.2022 illegally occupied the said property. Lastly, he has contended that the present application having no merit is liable to be dismissed with especial costs.

Learned Additional Prosecutor General Sindh while supporting the impugned order has submitted that the present Application may be dismissed being devoid of any merit.

Heard learned counsel for the parties and perused the material available on the record.

Admittedly, the documents produced along with the present application do not show that the present applicant has purchased the subject property and /or made any payment in respect thereof. When the learned counsel for the applicant was asked to show any document whereby the possession of the property was handed over to the applicant, he has failed to show the same. He has failed to controvert the police enquiry report through the documents available on the record.

Keeping in view the above position, there appears no illegality or infirmity in the impugned order as such the present application being devoid of any merit is dismissed with no order as to costs.

It is, however, made clear that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case.

JUDGE