

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
Crl. Revision Appln. No.45 of 2015.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection as Flag 'A'.
2. For Katcha Peshi.
3. For Hearing of M.A.No.2773/2016.

23.09.2016.

Messrs Asif Ali Abdul Razak Somro & Ashfaq Hussain Abro, advocates for the applicant/complainant.

Mr. Khadim Hussain Khooharo, A.P.G.

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Mr. Qurban Ali Agro, advocate files Vakalatnama on behalf of respondents, which is taken on record.

This Crl. Revision Application is directed against the order dated 18.06.2015, passed in Sessions Case No.290/2011, whereby the learned Ist Additional Sessions Judge, Mehar, dismissed the application filed by the applicant/complainant under section 227 of the Criminal Procedure Code, 1898 for alteration of the charge.

Learned counsel for the applicant submits that the applicant filed aforementioned Crl. Misc. Application under section 345 of Illegal Dispossession Act, 2005 against the respondents No.2 to 10 alleging therein that Block No.368, area 03 acres 35 Ghuntas situated in Deh Nau Goth, Taluka Mehar which was Government Na-Qbooli Land and since it was in the possession of the applicant the Collector District Dadu allotted the same to the applicant through allotment Order dated 09.07.2001 and on the basis of same allotment order the entry in the record of rights was also kept in favour of the applicant vide entry No.27. Learned counsel further submits that the trial Court framed the charge against the private respondents on 30<sup>th</sup> June 2011 wherein instead of mentioning "Block No.368" "S.No.368" has been mentioned. Learned counsel further submits that the land claimed by the applicant/complainant is not surveyed land but it is Muhag of S.No.368 and therefore it has been shown as "Block" in the allotment order of the applicant/complainant; however due to oversight the learned trial Court instead of mentioning word "Block" has mentioned "S.No", therefore, such application was filed by the applicant/complainant but the same was

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dismissed inter alia on the ground that the charge has been framed as per complaint filed by the complainant which finding of the trial Court while deciding the application is absolutely incorrect; therefore, the order passed by the trial Court is liable to be set aside by allowing application of the applicant/complainant under section 227 Cr.P.C. Learned counsel further submits that the applicant undertakes that if the charge is altered no application for recalling the witnesses shall be moved.

On the other hand learned counsel for the respondents No.2 to 10, has vehemently opposed this application and has submitted that the applicant/complainant has adopted tactics of delaying the proceedings as before filing an application for alteration of charge he has moved as many as two applications for recalling the applicant/complainant under section 540 Cr.P.C which were dismissed by the learned trial Court, vide order dated 03.09.2014. Besides an application under section 342, Cr.P.C was also filed by the complainant for recalling and reexamining the accused under section 342, Cr.P.C, the same was also dismissed by the trial Court, vide order dated 03.09.2014. The learned counsel submits that if this Crl. Revision Application is allowed, the respondents would seriously be prejudiced.

Mr. Khadim Hussain Khooharo, learned A.P.G submits that since the charge framed by the learned trial Court is not in consonance with the facts with regard to the description of the land which is as per direct complaint is in fact Block and not Survey Number; the findings of the trial Court that charge has been framed as per complaint filed by the complainant being incorrect and is not sustainable under the law.

I have heard learned counsel for the parties and perused the material. There is no denial to the fact that in the direct complaint filed by the applicant/complainant under Illegal Dispossession Act, the applicant / complainant claims that he has been allotted "Block No.368, admeasuring 3 Acres 35 Ghuntas, while in the charge instead of mentioning Block the word "S.No" has been mentioned therefore, finding of the trial Court that the charge has been framed as per complaint filed by the complainant is against the facts on record. The only contention of learned counsel for the respondents to the opposition of this Crl. Revision is that the applicant/complainant intends to linger on the matter, I am afraid, the contention is not correct as the counsel for the applicant has already given undertaking that if necessary

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alteration/correction is made in the charge he will not move an application for re-examination of the complainant or his witnesses.

I have also observed that not only the description of land as Block has not been mentioned in the charge but also the word Survey Number instead of Block has been mentioned in the statement of the accused recorded by the learned trial Court under section 342, Cr.P.C. I am also conscious of the fact that such error is curable under section 537, Cr.P.C but just with a view that there should not remain any such error in the record and proceedings of the case, which may at any subsequent stage of case cause any prejudice to either party. I dispose of this Crl. Revision Application directing the learned trial Court to make necessary correction in the charge as well as in the statement of the accused persons recorded under section 342, Cr.P.C by mentioning Block with red pen by deleting S.No.

Revision Application stands disposed of along with listed application.

  
Judge

M.Y.Panhwar/\*\*