

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

Cr.Rev.Appl.No.S- 109 of 2013

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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1. For Katcha Peshi.
2. For hearing of MA 3990/2013.

11.11.2013.

Mr. Ejaz A. Awan, Advocate for applicant.  
Mr. Pir Bux Bhurgri, Advocate for respondent.  
Syed Meeral Shah, D.P.G. for the State.

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Through instant Criminal Revision, the applicant Bashir Ahmed Odhano has called in question the order dated 20.07.2013 passed by learned Additional Sessions Judge, Jamshoro at Kotri (hereinafter referred to as trial Court) in Criminal Complaint No.25/2009, directing the applicant to hand over the possession of residential quarter situated at Kareem Mill Kotri (hereinafter referred to as subject quarter) to the respondent Muhammad Yousif.

Brief facts of the case are that respondent Muhammad Yousif filed Criminal Complaint u/s 3/4, 6 and 7 of Illegal Dispossession Act against the applicant and others with the following prayer:-

- “a) Initiate Criminal proceedings against the accused U/s 4 of the illegal dispossession Act, 2005 and punish them U/s 3 (2) of the Act ibid.*
- b) Restore the possession of the house bounded as, North Street and opposite houses of Beharies, South House of Pathan, (back side of the house) East house of Behari of Jala and Qayoom, West Quarter No.1 illegally dispossessed property in favour of the complainant.*
- c) Interim relief of restoration of possession of house of the complainant also be awarded.*
- d) Grant compensation of Rs.5,00,000/- in respect of victimizing the complainant and damages for harm done to her property in accordance with the provisions of section 544 Cr.P.C. as well as injuries received.*
- e) Any other relief which this Honourable Court deems fit just and proper may also be awarded in the circumstances of the case in favour of the applicant.”*

After service, the applicant appeared before the trial Court and contested the matter. During pendency of complaint, the trial Court passed order dated 15.10.2009

U/s 7 of Illegal Dispossession Act, 2005, whereby restored the possession of subject quarter to the complainant/respondent Muhammad Yousif and his family members. However, vide order dated 12.07.2010, the complaint filed by respondent was dismissed and the respondent was directed to hand over the possession of the subject quarter to the applicant. The respondent assailed the said order in Criminal Revision Application No.80/2010 before this Court which was disposed of vide order dated 05.07.2013 with the observations that impugned order dated 12.07.2010 suffers from material irregularity and calls for interference, therefore, the same was set aside and the case was remanded to the trial Court to take cognizance of it and after due trial, decide the case in accordance with law within a period of six months. After the order dated 12.07.2010 passed by this Court, the respondent filed an application before the trial Court for restoration of possession in pursuance of order dated 15.10.2009 which was allowed and the respondent was ordered to be put in possession of the subject quarter vide order dated 20.07.2013 which is impugned in this Criminal Revision Application.

Mr. Ejaz A. Awan, learned counsel appearing for the applicant has challenged the impugned order dated 20.07.2013 on the sole ground that the same was passed before the commencement of the trial as such it is an illegal order. In support of his contention, learned counsel has relied upon the cases reported as Ashique Hussain and another v. Athar Sher and 2 others (2008 P.Cr.L.J 719), Edward Henry Louis v. Dr. Muhammad Safdar (2009 P.Cr.L.J 1359) and Habibullah and another v. The State and 9 others (2009 MLD 1162).

Conversely, Mr. Pir Bux Bhurgri, learned counsel appearing for the respondent during arguments has admitted that the order dated. 15.10.2009 was passed before framing of charge. However, his contention was that the said order was not challenged before any competent Court as such it attains finality and in compliance thereof the possession of subject property was handed over to the respondent. Learned counsel has further contended that the trial Court dismissed the criminal complaint on the ground that it was not maintainable and restored the possession of subject quarter

to the applicant. The said dismissal order was set aside by this Court in Criminal Revision Application No.80/2010 as such the order of restoration of possession to applicant was also set aside and the respondent became entitled to be put in possession again, in the circumstances, the trial Court has passed a legal order dated 20.07.2013 impugned in this Criminal Revision which is not suffering from any illegality or infirmity.

Syed Meeral Shah, learned D.P.G. appearing for the State has supported the contentions of learned counsel for respondent.

I have considered the arguments and perused the record.

The applicant has not impugned the order dated 15.10.2009 passed by the trial Court under section 7 of the Illegal Dispossession Act 2005, in this Criminal Revision whereas the perusal of impugned order dated 20.07.2013 reflected that possession of the subject quarter was handed over to the respondent with the consent of applicant.

The relevant part of the impugned order reads as under:-

***“At this juncture, advocate for accused submitted application for grant of one month time to the accused for handing over the possession of the quarter in question to the complainant. Keeping in view the month of ‘RAMZAN’ and fastings observed by the Muslims, I find appropriate such request and direct the accused to hand over the possession of quarter in question to the complainant within one month time. The accused are directed not to make any change in the construction of quarter in question, nor remove the doors, windows, electricity wiring from the premises in question.”***

The impugned order being a consent order does not suffer from illegality or irregularity. The applicant in prayer clause (a) of this Criminal Revision has prayed that after setting-aside the impugned order dated 20.07.2013, matter may be remanded to trial Court for further proceedings in accordance with law, and in clause (b) the applicant has prayed for interim relief of suspending the operation of impugned order. Learned counsel for both the parties during arguments have admitted that in pursuance of order dated 20.07.2013, the possession of the subject quarter has been handed over by applicant to the respondent, as such the impugned order has been implemented in letter and spirit hence the prayer clause (b) became infructuous

whereas the proceedings for deciding the matter in accordance with law as prayed in clause (c) are pending before the trial Court.

In view of above, the impugned order does not require interference of this Court in its revisional jurisdiction which is to be exercised in exceptional cases and not in every criminal case unless the applicant makes out a case to show that either the order of sub-ordinate Court was incorrect, illegal or lacked propriety and findings recorded in the impugned order are not in accordance with law. Such conditions are missing in the instant matter. I, therefore, dismiss the Criminal Revision alongwith listed application.

Nevertheless to mention that the permanent possession of respondent over the subject quarter shall be subject to the outcome of the criminal complaint pending adjudication before the trial Court.

JUDGE

Tufail