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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Cr. Revn. Appln. No.S-28 of 2019

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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13.01.2020.

1. For orders on office objections.
2. For hearing of Main Case.

Mr. Zia Ahmed Abbasi, advocate for the applicant.

Mr. Tahir Abbas Shah, advocate for respondents No.1 to 3.

Mr. Aitbar Ali Bullo, DPG.

This criminal revision application is directed against the order dated 27.04.2019, whereby the learned II-Additional Sessions Judge, Kamber dismissed the Criminal Complaint No.56 of 2018 (*Re-Syed Abdullah Shah v. Bhoral Shah & others*), filed by the applicant/complainant under Section 3, 4 & 5 of the Illegal Dispossession Act, 2005 ("the Act").

2. Learned Counsel for the applicant contents that the applicant is the lawful owner of the subject land, which has illegally and forcibly been occupied by the respondents No.1 to 3 by dispossessing the applicant without lawful authority and hence the applicant maintained Criminal Complaint No.56 of 2018, which was dismissed by the learned II-Additional Sessions Judge, Kamber without appreciating the facts of the case, mainly upon the reports of Mukhtiarkar and SHO concerned.

3. On the other hand, learned Counsel for the respondents No.1 to 3 and learned DPG fully support the impugned order.

of the Act through the Mukhtiarkar, Taluka Kamber and the SHO, P.S Mahi Makol. As per the report of Mukhtiarkar dated 28.12.2018, the subject land is entered in the record of rights in the names of applicant/complainant and his co-sharers and the possession thereof is also lying with the applicant/complainant party, while as per report of said SHO, dated 26.12.2018, the subject land is barren one for the last several months and there had been dispute between the parties over the possession/management of a Madarsah and Masjid and there had been several rounds of litigation between complainant party and proposed accused persons. For instance, FIR No.45/2017, u/s 447, 506/2, 148, 149, PPC and FIR No.29/2018, u/s 504, 506/2, 427, 148, 149, PPC were lodged by the complainant side against the proposed accused. Besides, the proceedings in terms of Section 107, Cr.P.C are underway involving both the parties and the respondents have filed a petition being C.P. No.D-1045 of 2017 before this Court. In view of above-mentioned reports of Mukhtiarkar and SHO concerned, the learned Additional Sessions Judge-II, Kamber while observing the fact that in the given circumstances it seems that the complainant has not been able to make out his case as narrated by him in his complaint regarding his dispossession from lawful possession of the subject land, passed the impugned order.

5. It may be observed that the ingredients or elements for constituting an offence under Section 3 of the Act are that the accused entered into or upon any property without having any lawful authority to do so and with an intention of dispossession of or grabbing, controlling or occupying the property from the owner or occupier thereof. Hence, the legislature has put two conditions for invoking Section 3 of the Act,

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firstly, act of dispossession, grab, control, occupy without lawful authority and secondly, intention to dispossess, grab, control, occupy property from the actual owner. Section 5 of the Act itself has given discretion to the Court to satisfy itself as to the competence and maintainability of the complaint through conducting investigation by directing the officer-in-charge of police station to investigate and as per second proviso of Section 5, in case a local enquiry is necessary for the purpose of the Act, the Court may direct a Magistrate or a Revenue Officer in the district to make enquiry and submit report, which shall construe as evidence in the case. In the instant case, the Mukhtiarkar concerned after conducting local enquiry has submitted categorical report that the subject land is in possession of applicant/complainant party, while the SHO concerned has given details of the cases between the parties and since the basic ingredient viz., dispossessing from the subject land of the applicant/complainant and occupying the same illegally by the respondents No.1 to 3 is missing in this case, the learned trial Judge rightly passed the impugned order, which requires no interference under revisional jurisdiction of this Court. Hence, this criminal revision application is dismissed accordingly.


JUDGE