

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Revision Application No.196 of 2017

[Muhammad Saleem v Muhammad Altaf and 7 others]

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For hearing of Case:

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Mr. Muhammad Arshad Tariq, Advocate for the Applicant.
Mr. Muhammad Ahmed Masood, Advocate for Respondent No.1.
Mr. Muhammad Altaf, Advocate for the Respondent No.2.
M/s Muhammad Mansoor Mir and & M.B. Asher, Advocates for
Respondent No.8.
Mr. Zahoor Shah, DPG.

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Date of hearing

14.05.2025

Date of order

22.05.2025

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ORDER

Shamsuddin Abbasi, J.- Aggrieved of dismissing his complaint under Section 200, Cr.P.C. at initial stage through order dated 22.05.2017, penned down by the learned Special Judge, Anti-Corruption (Provincial), Karachi, in Direct Complaint No.09 of 2017 (Re: Muhammad Saleem v Muhammad Altaf & others], the applicant has preferred the instant Criminal Revision Application under sections 435 and 439-A Cr.P.C. An extract is reproduced below:-

"record reveals that there is dispute of property between brothers and such suits are pending adjudication including Suit No.636/2005 before the Hon'ble Sindh High Court. Although "annexure C-2" was registered by the Sub-Registrar Gulshan-e-Iqbal by referring the directions of Honourable High Court in Suit No.636/2005 pending there, but said instructions are not appeared in the order dated 25.06.2005 (Annexure A-5) of said suit. As such, at the most accused has committed contempt of the Honourable High Court, therefore, proper remedy may be engaged accordingly if so desirable.

Besides above, it is admitted position that Suits No.636, 637 and 638 had been disposed off vide order dated 19.03.2008 passed by Honourable High Court, but no point of said directions dated 25.06.2007 was raised, which shows their consent at that stage.

In view of the above facts and circumstances I am of the humble opinion that instant direct complaint merits no

consideration. I therefore not to inclined to refer it for preliminary inquiry, hence dismissed”.

2. The applicant claims himself to be the lawful owner of the property constructed on plot No.13/101, Block-3, Survey Sheet No.35-P/1, measuring 317 square yards, situated at Maqboolabad Cooperative Housing Society, Karachi [hereinafter referred to as the “said property] by virtue of registered Power of Attorney before Sub-Registrar-IX, Karachi, which was later on registered in the name of respondents 1 to 8 by way of sub-lease before respondent No.9 on the basis of a forged Special Power of Attorney, managed by respondents 3 and 4, with a note that such registration is made under the order dated 25.06.2007 passed by this Court in Suit No.636 of 2025 though no such directions were issued by this Court in the said suit, hence the applicant approached the relevant Court and filed a complaint under Section 200, Cr.P.C. and prayed for following relief(s):-

“to call for the R & P of the above said complaint from the Learned Trial Court and be pleased to recall and set aside the impugned order dated 22.08.2017 passed by the learned Trial Court and direct the Learned Trial Court to register the complaint against Respondents U/S 161/406/420/467/ 468/ 471/34 PPC R/W Section 5(2) of the Act-II 1947Z”.

3. It is, inter alia, contended on behalf of the applicant that the applicant is lawful owner of the said property whereas the respondents 1 to 8 by commission of fraud, misrepresentation and cheating managed to register a sub-lease in connivance with the respondent No.9. It is next submitted that per note of the Sub-Registrar the sub-lease was executed and registered under the orders of the Court in Suit No.636 of 2005 but no such order or direction has been passed /issued by this Court. It is also submitted that the respondents in collusion with each other have usurped the property of the applicant under the garb of the order of this Court by playing fraud, misrepresentation managing forged documents and concealment of true facts for which they are liable to be punished. Per learned counsel, the learned trial Court ought to have registered the complaint and decide the same on merits instead of dismissing it at initial stage without referring the

matter for preliminary enquiry. The learned counsel while emphasizing his submissions has submitted that pendency of civil litigations between the parties does not have a bar on criminal proceedings and both proceedings could be proceeded simultaneously. He has placed reliance on the case of *Haji Sardar Khan Saleem v Muhammad Ashraf and others*[2006 SCMR 1192].

4. On the other hand, the learned counsels appearing for the respondents as well as learned DPG have supported the impugned order and submitted that the findings recorded by the learned trial Court are based on fair evaluation of record and the learned counsel for the applicant has failed to point out any illegality or serious infirmity committed by the learned trial Court while passing the impugned order, hence no case for criminal prosecution is made out.

5. I have given my anxious consideration to the submissions of respective sides and perused the entire material available before me with their able assistance.

6. Record demonstrates that the dispute relates to over property between the brothers for which civil litigations are pending before the Courts of competent jurisdiction since 2005. The grievance of the applicant is that the respondents under the garb of the order of this Court passed in Suit No.636 of 2005 on 25.06.2007, in connivance with the concerned Sub-Registrar got his property transferred in their names by way of sub-lease registered before respondent No.9, by commission of fraud, misrepresentation and preparation of forged documents though said order does not disclose any kind of direction for transfer or registration of property in favour of respondents 1 to 8.

7. A bare perusal of the impugned order reveals that civil litigations pending between the parties through suits including Suit No.636 of 2005 were disposed of vide order dated 19.03.2008, but neither any objection was raised nor the attention of the Court was drawn to the effect that the property was transferred in favour of respondents 1 to 8 by way of sub-lease without order or direction of this Court. The learned trial Court, therefore, observed

that there was consent of the applicant in transferring the property in the names of respondents 1 to 8. Even otherwise, had there been any wrong, the applicant had a remedy to file contempt application against the respondents in the pending suit for transferring the property in their names, illegally and unlawfully, but he has not done so and even raised no objection at the time of disposal of suit in 2008. Even if the applicant is aggrieved of the act of registration of property by the respondent by way of sub-lease, the genuineness or otherwise of the said document would be validly determined by a Civil Court. In the peculiar facts and circumstances of the case, patently the matter seems to be of civil nature. It is well settled law that where the ultimate criminal liability depends on the fate of civil lis, the criminal proceedings are, by operation of law, required to be stopped. Guidance is taken from the case of *Akhlaq Hussain Kayani v. Zafar Iqbal Kayani and others* (2010 SCMR 1835).

7. The learned trial Court has carefully scanned the material placed before it and concluded that the case in hand did not fall within the ambit of criminal prosecution under Section 200, Cr.P.C.

8. For what has been discussed above, I am of the considered view that no case attracting the provisions of Pakistan Penal Code, 1860 has been made out. The learned counsel for the applicant has not raised any question of law that may require consideration by this Court in exercise of its Revisional Jurisdiction, scope of which is limited and confined to correction of jurisdictional defect, patent illegality or irregularity affecting the merit of the case. I find that the learned trial Court has passed the impugned order after due application of mind and careful appreciation of available material, hence calls for no interference by this Court. In view thereof, the instant Criminal Revision Application is bereft of any merit stands dismissed. The applicant, however, shall be free to agitate his claim in a suit before a Civil Court, having jurisdiction.

JUDGE