

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Miscellaneous Application No.S-131 of 2025

Applicants:

1. Tamachi s/o Bahaduro.
 2. Girdari s/o Tamachi.
 3. Vasdev s/o Tamachi.
 4. Masoo s/o Tamachi.
 5. Kesho s/o Tamachi.
 6. Ramchand s/o Bahadro.
 7. Prem s/o Ramchand.
 8. Soobo s/o Bahadro
 9. Hareesh s/o Soobo.
 10. Hareesh s/o Bahadro
 11. Moolchand s/o Jani
 12. Achar s/o Jalio
 13. Washno s/o Jalio
 14. Majnoon s/o Kachoo
 15. Damnoon s/o Panoo
 16. Taro s/o Bhugro
 17. Leekhraj s/o Bhugro
 18. Sukhio s/o Punhoon
 19. Devo s/o Punhoon
 20. Dharmo s/o Punhoon
 21. Mansho s/o Paho
 22. Laloo s/o Damoo
 23. Goman s/o Gabro
 24. Jeean s/o Gabro
 25. Bhooro s/o Majnoon
- Through Mr. Ghulamullah Chang advocate.

Respondents:

1. Manjhi Khan s/o Ali Bux.
Through Mr. Muhammad Arif advocate
2. SHO P.S Samaro District Umerkot.
3. Mukhtiarkar Taluka Samaro, District Umerkot.
4. The State.
Official respondents through Mr. Ghulam Abbas Dalwani, Deputy P.G.

Date of hearing: 07.07.2025.

Date of Order: 07.07.2025.

ORDER

Jan Ali Junejo, J. – This Criminal Miscellaneous Application has been filed under Section 561-A of the Code of Criminal Procedure (Cr.P.C.) by the applicants/accused, seeking to quash the proceedings of Complaint No. 21 of 2024, filed under Sections 3, 4, 5, and 6 of the Illegal Dispossession Act, 2005, currently pending trial before the learned Sessions Judge, Umerkot. This application specifically challenges the **Order dated May 14, 2025** (here-in-

after referred to as the “Impugned Order”), passed by the learned Sessions Judge, Umerkot (here-in-after referred to as the “Trial Court”), which dismissed the applicants’ earlier application under Section 265-K Cr.P.C. for their acquittal in the aforementioned complaint.

2. The genesis of this application lies in a complaint lodged by Respondent No. 1, Manjhi Khan, on December 9, 2024, before the Sessions Judge, Umerkot. The complainant alleged that he is the rightful owner of agricultural land surveyed as S. No. 23/1, 8, situated in Deh 327-A, Taluka Samaro, District Umerkot, with the ownership duly recorded in the record of rights. On August 19, 2024, when the complainant visited his land, the applicants/accused were present and allegedly threatened him to vacate the land. The complainant asserted his ownership, stating that the 4-00 acres belonged to him and was entered in his revenue record. It is further alleged that the applicants/accused, armed with weapons, came to the spot, and one among them, Sarwan, made two aerial fires with a pistol, subsequently dispossessing the complainant from his land. Following the complaint, reports were called from Respondent No. 2 (SHO, P.S. Samaro) and Respondent No. 3 (Mukhtiarkar, Taluka Samaro). The report from Respondent No. 3 indicated that the entry in the record of rights in favor of Respondent No. 1 was in "red ink". The applicants contend that they have been residing in “Village Bahaduro Bheel” since 1965, following their displacement from their original village during the Indo-Pak War. They assert that their village is electrified, has a private school, and has seen development work under USAID collaboration in 2014, including an earthen road and drainage system.

3. The applicants further claim that Respondent No.1’s party has been attempting to dispossess them from their houses. They had filed a Revenue Appeal before the Additional Commissioner No. 1, Mirpurkhas, challenging the alleged illegal grant in favor of Respondent No. 1, which was dismissed. Subsequently, they filed Revision Application No. SROR-180 of 2024 before the

Board of Revenue, Hyderabad, which is stated to be pending adjudication. Prior to this application, the applicants had filed a Criminal Misc. Application under Section 265-K Cr.P.C. before the learned trial court, seeking their acquittal. This application was dismissed by impugned order dated May 14, 2025.

4. The learned Sessions Judge, Umerkot, in his order dated May 14, 2025, noted that the complaint under Sections 3 & 4 of the Illegal Dispossession Act, 2005, was filed by Manjhi Khan against the applicants, alleging ownership of the disputed land and dispossession by the accused, including aerial firing. Reports from the SHO and Mukhtiarkar were received. Cognizance was taken on January 9, 2025, and after the appearance of the accused and supply of case papers, a formal charge was framed against all accused at Ex. 2. The accused pleaded not guilty and claimed trial. The applicants subsequently filed an application under Section 265-K Cr.P.C. for their acquittal, arguing false implication, a manipulated entry in favor of the complainant, and the pending adjudication of the matter before the Board of Revenue. They also contended that the entry in favor of the complainant was suspended by the Board of Revenue and highlighted their long-standing residence in the village since 1965. The learned counsel for the complainant, in rebuttal, argued that the applicants had occupied the complainant's land, which was rightly allotted, and that no stay order had been granted by the revenue hierarchy, nor was the entry in favor of the complainant suspended. He emphasized that the matter was at the stage of evidence, and the pleas taken by the applicants needed to be thrashed out during the trial. The learned Sessions Judge, after hearing arguments and perusing the record, dismissed the Section 265-K Cr.P.C. application. He observed that while the applicants claimed the entry in favor of the complainant was manipulated and that a revenue dispute was pending, they failed to produce any stay order or suspension order from the revenue hierarchy. The Sessions Judge concluded that since the charge had been framed and the matter was fixed for evidence, the application under Section 265-K

Cr.P.C. was premature and the complaint could not be dismissed summarily. The Sessions Judge relied on the precedent set in case of *Shabana Khan Advocate v. Major (Retd.) Jehanzeb Aslam and 2 others (2022 MLD 1109)*, which holds that Section 265-K Cr.P.C. is not meant for cases registered upon complaint, and once cognizance is taken, the complaint cannot be dismissed summarily.

5. The learned counsel for the Applicants, advanced arguments seeking the quashment of proceedings. He vehemently contended that the applicants are innocent and have been falsely implicated with malafide intentions by the private respondent to settle a civil dispute through criminal proceedings. He asserted that the alleged entry in the record of rights in favor of Respondent No. 1 is manipulated, bogus, and fictitious, in contrast to the genuine entry in the names of the applicants' forefathers, which predates the disputed claim. He highlighted that the matter of ownership is currently sub-judice before the Board of Revenue, Hyderabad, where a revision application is pending, and crucially, that the Board of Revenue has already suspended the entry in favor of the complainant. He further emphasized the applicants' long-standing possession of the village since 1965, pointing to developmental works like USAID projects and the existence of a school as proof of their established habitation. He argued that the complaint is barred by limitation and that the Illegal Dispossession Act, 2005, is not applicable as the applicants are not land grabbers but long-term residents. Lastly, the learned counsel prayed for allowing the present Criminal Misc. Application.

6. The learned counsel for the Private Respondent (Complainant), strongly opposed the quashment application, arguing that it is premature and without merit. He contended that the applicants have illegally occupied the complainant's land, which was duly allotted to him by the competent authority after full payment of government fees. He firmly refuted the claims of a suspended entry, stating that neither has any stay order been granted by the

revenue hierarchy, nor has the entry in favor of the complainant been suspended. He submitted that the validity of the entry in favor of the applicants' forefathers, if any, is a matter that needs to be thoroughly examined during the trial. He underscored that cognizance has been properly taken, a formal charge has been framed, and evidence is yet to be recorded, which is essential to ascertain the truth of the allegations. He asserted that a full-fledged trial is necessary to determine the facts of possession and ownership, and that the application under Section 561-A Cr.P.C. at this stage effectively seeks to preempt the legal process. Lastly, the learned counsel prayed for dismissal of the Criminal Misc. Application.

7. The learned Deputy Prosecutor General (DPG) for the State concurred with the arguments presented by the learned counsel for the private respondent. He submitted that the allegations made in the complaint, coupled with the fact that cognizance has been taken and a charge has been framed, establish a prima facie case that warrants a full trial. He emphasized that all factual disputes, including the claims and counter-claims regarding ownership, possession, and the authenticity of revenue entries, are intricate matters requiring the leading of evidence by both parties. He stressed that a just and fair determination can only be achieved after the recording of evidence and thorough cross-examination of witnesses, and therefore, the quashment of proceedings at this nascent stage would be inappropriate and against the principles of natural justice.

8. This Court has carefully considered the arguments advanced by the learned counsel for all parties and has thoroughly examined the available record, including the impugned Order dated 14th May 2025, passed by the learned Sessions Judge, Umerkot. The power to quash criminal proceedings under Section 561-A Cr.P.C. is an extraordinary jurisdiction, to be exercised sparingly and only in exceptional circumstances—specifically, where there is a clear abuse of the process of the Court, or where the allegations, even if accepted at face value, do not disclose the commission of any cognizable offence.

It is not intended to short-circuit the trial process in cases where factual controversies exist that necessitate adjudication through the recording of evidence. In the present case, the dispute essentially centers on the question of ownership and possession of agricultural land. The applicants claim to be in long-standing possession since 1965 and contest the validity of the land grant made in favour of Respondent No. 1. These are, however, factual assertions that require proper adjudication at trial based on evidence. Although the applicants have annexed documents relating to a pending revision application before the Board of Revenue, the trial Court has specifically observed that no definitive stay or suspension order issued by the revenue authorities was produced before it that could negate the complainant's claim at this preliminary stage. The learned Sessions Judge has already taken cognizance of the complaint and has framed a formal charge against the applicants. The matter now stands fixed for recording of evidence. In these circumstances, the existence of a *prima facie* case is evident, warranting a full trial. The grounds raised by the applicants—including the delay in lodging the complaint, the alleged fabricated nature of the revenue entry, and questions regarding the applicability of the Illegal Dispossession Act, 2005—are all matters of defense. These issues can be appropriately raised, examined, and adjudicated upon by the trial Court after both sides have led evidence. Furthermore, the mere pendency of a revision application before the revenue authorities does not, by itself, bar the maintainability of a complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005. This position is reinforced by the explicit language of Section 3(2) of the said Act, which provides as follows: *“Whoever contravenes the provisions of the sub-section (1) shall, without prejudice to any punishment to which he may be liable under any other law for the time being in force.....”*.

In this regard, reliance is placed on the case of ***The State through Prosecutor General Punjab, Lahore v. Chaudhry Mohammad Khan and others (PLD 2025 Supreme Court 254)***, wherein the Honourable Supreme Court of Pakistan held that: *“It is settled law that criminal*

proceedings are not barred in presence of civil proceedings and that civil and criminal proceedings can proceed simultaneously". In another case, **Muhammad Farooq v. Ahmed Nawaz Jagirani and others (PLD 2016 Supreme Court 55)**, the Honourable Supreme Court of Pakistan held that: *"We have seen the complaint. The list of documents shows that prima facie case for taking cognizance has arisen and no exception to such cognizance could be taken by the High Court in exercise of its inherent jurisdiction. In complaint case, trial Court is not required to examine material minutely and or in depth, but has merely see that prima facie a case has been made out to proceed further with the matter for issuance of process or summons; the High Court in exercise of inherent jurisdiction cannot strangle the trial by overstretching its jurisdiction under Section 561-A, Cr.PC (see Noor Muhammad case, supra) and embark upon to examine adequacy and or inadequacy of evidence, which stage will only reach after charge is framed and complainant is given an opportunity to prove his case beyond reasonable doubt"*.

9. The precedent cited by the learned Sessions Judge in 2022 MLD 1109 aptly illustrates the principle that an application under Section 265-K Cr.P.C. (and by extension, a quashment application at this stage in a complaint case) is generally premature once cognizance has been taken and the matter is set for evidence. The determination of whether there is "no probability of the accused being convicted" is best made after the prosecution has had an opportunity to lead its evidence. The arguments regarding malafide intention and abuse of process, while serious, cannot be definitively ascertained at this preliminary stage without a full examination of the evidence. The mere pendency of a civil/revenue dispute over the property does not, by itself, automatically warrant the quashment of criminal proceedings, especially when allegations under the Illegal Dispossession Act are leveled, which specifically addresses acts of forceful dispossession.

10. The scope of the Illegal Dispossession Act, 2005, is not restricted to organized land mafia or Qabza groups but extends to all forms of illegal

occupation, as reaffirmed in the case of *Niaz Ahmed and another v. Aijaz Ahmed and others (PLD 2024 Supreme Court 1152)*. Further reliance is placed on the dictum laid down by the Honourable Supreme Court of Pakistan in the case of *Mst. Gulshan Bibi and others v. Muhammad Sadiq and others (PLD 2016 Supreme Court 769)*, wherein it was observed that: *“Reading of section 3(1) the Illegal Dispossession Act, 2005 shows that terms like dispossess, grab, control or occupy had been used which clearly meant that illegal dispossession in all forms had been made an offence and by the use of the terms 'no one' and 'whoever' in sections 3(1) & (2), anyone and everyone who committed such an offence was made liable for punishment. The very use of the terms like 'no one' and 'whoever' were clearly intended to convey the widest possible meaning for the offenders. Thus without any distinction any person who illegally dispossessed, grabbed, controlled or occupied property of a lawful owner or occupier shall be liable for prosecution under the provisions of the Illegal Dispossession Act, 2005”.*

11. For the foregoing reasons, this Court finds that the Criminal Miscellaneous Application for quashment is premature. The issues raised by the applicants, while relevant to their defense, require factual determination through the trial process. There is nothing on record at this stage to suggest that the proceedings before the learned Sessions Judge, Umerkot, constitute a clear abuse of the process of the court or that the allegations are so baseless that no offense is made out whatsoever.

12. In light of the above discussion, this Criminal Miscellaneous Application is found to be without merit and is hereby dismissed. The learned Sessions Judge, Umerkot, is directed to proceed with the trial in Complaint expeditiously in accordance with law, giving both parties a fair opportunity to present their respective cases and lead their evidence.

JUDGE

Saleem

