

## IN THE HIGH COURT OF SINDH, KARACHI

Misc. Application No. 13036 of 2017

In

Criminal Revision Application No. 175 of 2016

Israr Ahmed. .... Applicant.

Versus

The State and another. .... Respondents

Date of Hearing

as well as of short order : **25.11.2019**

Applicant Israr Ahmed through Mr. Jamil Ahmed Shah, advocate.  
Respondent No.1 the State through Mr. Mazhar Ali Siyal, APG.  
Respondent No.2 Amjad Shah through Mr. Ahmed Ali, advocate.  
Mr. Iqtidar Rasool, Mukhtiarkar Thatta and Mr. Shafqal Sheikh, City Surveyor Thatta are present.

**ORDER**

**Fahim Ahmed Siddiqui, J:-** By filing the listed application, the applicant is seeking review of order dated 29-11-2017 whereby the instant criminal revision filed by the applicant was dismissed and the impugned order dated 25-11-2016 passed by the learned trial Court was maintained. Through the impugned order, a complaint filed by the applicant against the respondent under the Illegal Dispossession Act was dismissed.

2. The background of the instant case is that the applicant is claiming ownership over some piece of land; allegedly upon some portion of the same, respondent has encroached upon. The applicant filed a complaint under the Illegal Dispossession Act, which was dismissed through the impugned order. The reason for dismissal of the complaint was that the

said piece of land did not belong to the applicant and the same was actually the government land. The impugned order was challenged before this Court but the same was maintained through the order dated 29-11-2017. It is the contention of the applicant under the listed application that some piece of evidence was overlooked by this Court while passing the order dated 29-11-2017.

3. The learned counsel for the applicant submits that after the final hearing, the applicant had filed a document under the statement of his counsel, which is the extract of record of rights showing the name of one Hindu namely Luddo Mal from whom the applicant had purchased the said property. He submits that the competent civil court has already passed judgment and decree in favour of the applicant, as such he is the lawful owner of the property in question. According to him, an application under Section 12 (2) of CPC, filed by the government, has already been dismissed. He submits that although on the next date of hearing, the document was filed; but the same was not discussed in the disposal order of the criminal revision application. In response to a query, the learned counsel submits that this Court has ample power to entertain the instant application, which is, in fact, a review application under which the entire matter may be reopened. He points out that in the presence of a civil court's decree, it cannot be presumed that the land belongs to the government. He submits that it would be proper if the matter is heard afresh and a new order be passed in the instant disposed of matter.

4. The learned counsel for the respondent No.2 has opposed the instant application by submitting that this Court has passed an appropriate order against which the applicant has a remedy before the Hon'ble Supreme Court but it will not be fair to file such type of application before this forum. In the end, he submits that the listed application should be dismissed.

5. The learned APG for the state submits that the instant criminal revision application has already been disposed of through a speaking order against which the remedy is available before the Apex Court only. In response to a query, he categorically states that no power to review its own judgment or final order is available to this Court.

6. I have heard the arguments advanced and have gone through the relevant record.

7. So far as the scope of review in a criminal case is concerned, previously it was the view that a High Court has no inherent power to review its own final decision in a criminal case. In this respect reliance may be taken from the teeming number of judgments of the colonial era like **Queen-Empress vs Durga Charan (ILR 7 All 672)**, **Govind Sahai vs Emperor (AIR 1916 All 183)**, **Rajab Ali vs Emperor (AIR 1919 Cal 409)**, etc. In a case reported as '**In re Somu Naidu (AIR Mad 640)**', it was held by Madras High Court that the judgment of a High Court in a criminal matter is final as soon as it is signed and thereafter Court becomes *functus officio* and enjoys no power to revise or alter its own decision. However, for the first time, the learned Lahore High Court in the case of **Raju vs Emperor (AIR 1928 Lah 462)** has ajar slightly the door of review in criminal cases by holding that the High Court had never inherent power to alter or review its own judgment in criminal case except in cases where the judgment was passed without jurisdiction or in certain cases default of appearance without an adjudication on the merits.

8. No doubt, the legislature has equipped a High Court with ample inherent power under Section 561-A CrPC, but the same cannot bypass the general rule that after finally disposal of a criminal matter, the High Court will become *functus officio* and in this respect the inherent power under Section 561 CrPC can only be invoked in limited cases when

apparently there is a miscarriage of justice and no other remedy is available. In this respect reliance may be placed on a case of the Hon'ble Supreme Court reported as **Muhammad Samiullah Khan vs The State (PLD 1963 SC 237)**, wherein it is held as:

*“The jurisdiction under section 561-A of the Criminal Procedure Code is, in our opinion, of an extraordinary nature intended to be used only in extraordinary cases where there is no other remedy available. It is of a limited scope and cannot be utilised where there is other express remedy provided by the Code of Criminal Procedure. In the exercise of the inherent jurisdiction under this section the High Court can neither exercise the powers of a Court of appeal nor can it enhance a sentence nor can it even re-consider the question of sentence. It is designed to prevent an abuse of the process of Court and cannot be regarded as being wide enough to give to the High Court the same power that it has under section 435 read with section 439 of the Code of Criminal Procedure to examine the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court.”*

9. So far as the merit of the case is concerned, the sole ground for moving the listed application is that some documents going to the roots of the case were not discussed in the final order. The document is actually an Entry in the record of rights, which pertains to a person namely Luddo Mal from whom the applicant allegedly purchased the disputed property. Although, it is contended that the land in question was purchased by Luddo Mal from the government but in response to a query, the learned counsel for the applicant frankly admits that the challan for payment of the price of land was not available with the applicant. In response to another specific question, he submits that it is not in the knowledge of the applicant whether the property was purchased from the government after lump-sum full payment or in installments. Non-availability of paid challan has cut the roots of the case of the applicant, especially when the government is denying the ownership of the applicant over the said piece of land. Since no paid challan was produced; therefore, in the existing

position of affairs the documents, filed by the applicant under the statement of his counsel after final arguments, were rightly overlooked.

10. The ultimate outcome of the above discussion is that the listed application for seeking review of the final order is not maintainable while the merits of the case are also not warranted for consideration of the same; therefore, the same is dismissed through my short order dated 25.11.2019 and these are the reasons for the same.

Dated: \_\_\_\_\_

**J U D G E**