IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

(01) Criminal Revision Application No.S-11 of 2025

For the Applicant :Noor Muhammad Khan son of Ghazi Khan, through Mr. Imdad Ali Unar, Advocate.

For Respondents :1. Farhat Haris Siddiqui wife of Muhammad Haris Siddiqui.

2. Maryam Siddiqui daughter of Muhammad Haris Siddiqui.

Through M/s Muhammad Humayon Khan, Mangal Menghwar, M. M. Taha Khan and Bakhtawar Naz Shah, Advocates.

3. Abdul Khaliq Juttyal, Deputy Superintendent of Police Hussainabd, Hyderabad.
4. Abbass Babbar, SHO of Police Station Hussainabad, Hyderabad.
5. Hakim, ASI Hussainabad, police station, Hyderabad.
Through Mr. Tariq Shah, Advocate.

The State:
Through Mr. Shahid Shaikh, Assistant Prosecutor General.

(02).Criminal Revision Application No.S-17 of 2025

For the Applicant :Noor Muhammad Khan son of Ghazi Khan, through Mr. Imdad Ali Unar, Advocate.

For Respondents :1. Farhat Haris Siddiqui wife of Muhammad Haris Siddiqui.

2. Maryam Siddiqui daughter of Muhammad Haris Siddiqui.

Through M/s Muhammad Humayon Khan, Mangal Menghwar, M. M. Taha Khan and Bakhtawar Naz Shah, Advocates.

3. Abdul Khaliq Juttyal, Deputy Superintendent of Police Hussainabd, Hyderabad.
4. Abbass Babbar, SHO of Police Station Hussainabad, Hyderabad.
5. Hakim, ASI Hussainabad, police station, Hyderabad.
Through Mr. Tariq Shah, Advocate.

The State:
Through Mr. Shahid Shaikh, Assistant Prosecutor General.

Date of Hearing: **06th, 20th and 22nd May, 2025**

Date of Judgment: **11th June, 2025**

JUDGMENT

Miran Muhammad Shah, J. I will decide through this judgment the following questions of law which concern the interpretation of the Illegal Dispossession Act, 2005[1]

(i) Can cognisance be taken against an owner of a property for illegal dispossession of a tenant under the 2005 Act?

(ii) What is the scope of a complaint under the 2005 Act?

(iii) (a) Is Section 5 of 2005 Act a mandatory or a directory provision?

(b) What are the conditions and scope of section 5 of 2005 Act?

(c) What is to be done when the 'officer-in-charge' of the concerned police station is himself an accused in a complaint under section 3 of the 2005 Act?

(d) Whether the report of the I.O in the present case was an "investigation report" or an "inquiry report" for the purposes of section 5(1) of the 2005 Act?

(e) Whether a report under section 5(1) is construed as evidence in a trial under the 2005 Act?

(iv) Can a complaint under sections 3 and 4 of the 2005 Act be filed through an attorney?

(v) What is the status of an order taking cognisance in a complaint under sections. 3 and 4 of the 2005 Act?

Factual Background

2. The back ground of the case is that the applicant is the owner of a property, namely House No. 11-B, measuring 800 Square Yards, located in Block-C, Unit No. 2, Latifabad, Hyderabad[2], which was let out by him to the Respondent No.1 vide Lease Agreement dated 18th May 2023 on such terms and conditions as are mentioned therein, and,

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[1] "2005 Act"

[2] "the property"

on the property, the Respondent No.1 was operating a school by the name of New Falconhouse Grammar School and College. During this time, rent disputes arose between the parties and they initiated various litigation against each other, including one rent case, being Rent Application No.188 of 2024, titled *Noor Muhammad Khan v Mst. Farhat Haris Siddique* before the learned IV Senior Civil Judge and Rent Controller, Hyderabad, for ejectment of the Respondent No.1 from the property, and one civil suit, being F.C. Suit No.1502 of 2024 before the same court by the Respondent No.1 against the Applicant. During pendency of the said litigation, it is alleged that, on 31st December 2024, at around 08:50 PM, Respondents No.1 and 2 were illegally dispossessed from the property by the Applicant and armed persons allegedly associated with him in collusion with police and law enforcement officials (some of whom are a party to this case as well). During their alleged illegal dispossession from the property, the said armed persons allegedly associated with the Applicant damaged the school equipment on the site whereas a lot of valuable articles and school record detailed in the application are said to have been lying in the property at the disposal of the Applicant. Respondent No.1, therefore, filed a Complaint under sections 3 and 4 of the 2005 Act, being I.D. Complaint No.03 of 2025 titled *Farhat Haris Siddiqui and another v Noor Muhammad Khan and others*, before the learned Sessions Judge, Hyderabad, which was transferred administratively to the learned Ist Additional Sessions Judge/Model Criminal Trial Court, Hyderabad, for disposal.

3. During the proceedings of the Complaint, the learned Additional Sessions Judge passed: **(i)** an Order dated 06 January 2025 under section 5 of the 2005 Act wherein he appointed Mr. Siraj Lashari, Deputy Superintendent of Police (DSP) as Investigation Officer; and **(ii)** another Order dated 06 February 2025 under sections 3 and 4 of the 2005 Act taking cognisance against the Applicant and others. Both these criminal revisions, out of which the questions of law framed above arise and which I shall dispose of together, respectively challenge the impugned Orders.

4. The learned Counsel for the Applicant, contended that the impugned Orders are illegal and that the learned Additional Sessions

Judge travelled beyond his jurisdiction in passing them. The crux of his arguments is that:

- Section 5 of the 2005 Act provides for appointment of only an officer-in-charge of a police station to investigate a complaint and submit his report and so it was beyond the learned Court's domain to appoint Mr. Siraj Lashari, DSP, as an Investigation Officer in the matter who was appointed at the whims and wishes of Respondent No. 1.

- Alternatively, even if some other officer was to be appointed, then the Senior Superintendent of Police, Hyderabad, should have been appointed to investigate the matter.

- A complaint under sections 3 and 4 of the 2005 is not maintainable against the owner of a property and, admittedly, the Applicant is the owner of the property in this case while Respondent No.1 was his tenant.

- Respondent No.1 admittedly violated the terms of tenancy between the parties and did not make payments of rent within time for which the Applicant has already lodged FIRs against Respondent No. 1.

- Respondent No.1 had also sublet the property to one Uqash Ahmed son of Nisar Ahmed and filed the complaint against the Applicant out of *mala fide*.

- It is a settled principle of law that a court is bound to implement the law as it is and, if any order is contrary to the law, then the entire superstructure based on it shall fall.

- Since the first impugned Order appointing DSP Siraj Lashari is a void order, the second impugned Order is also a void order having been passed on its footing.

- The report of Investigation Officer DSP Siraj Lashari will be construed as evidence as per section 5(1) of the 2005 Act which shall seriously prejudice and harm the Applicant.

- The complaint in hand was filed by Respondent No.2 as the attorney of Respondent No.1 which is not permissible under criminal law.

- The Applicant has not been able to get the possession of the property; and that the impugned Orders are contrary to the law.

- Learned Counsel also argued on certain factual allegations, such as execution of sub-lease agreement between Respondent No.1 and one Uqash Ahmed, dishonour of cheques of rent and pendency of rent cases against Respondent No. 1.

5. In support of his arguments, learned Counsel cited *Secretary, Ministry of Finance, Finance Division, Government of Pakistan v Muhammad Anwar*[3], *Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010*[4], *Mst. Inayat Khatoon v Muhammad Ramzan*[5], *Tariq Irshad v State*[6] and *Hafeez Akhtar Kiyani v Bashir Ahmed*[7].

6. On behalf of Respondents Nos. 3 to 5, the learned counsel argued that:

- The Order impugned in the said criminal revision is a void order as the learned Trial Court had appointed Mr. Siraj Lashari, DSP, as *Investigation/Inquiry* Officer whereas the language of section 5 of the 2005 Act is clear on the point that only the officer-in-charge of the concerned police station can be appointed.

- Under section 5 of the 2005 Act, only an investigation can be done and not an inquiry as contemplated under section 4(k) and (l) of the Criminal Procedure Code, 1898.

- Under section 18 of the Police Order, 2002, the power to transfer investigations of cases is only vested in the Deputy Inspector General of Police (DIGP) concerned, and so, if the

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[3] 2025 SCMR 153
[4] PLD 2010 SC 759
[5] 2012 SCMR 229
[6] PLD 2006 Karachi 25
[7] 2016 PCrLJ 457 (Islamabad)

officer-in-charge of the police station concerned was not competent, then the matter lied in the hands of the DIGP to change the investigation officer.

- The impugned Order and the foundation based on it is without jurisdiction and a nullity in law.

- This Court may quash the entire proceedings before the learned Trial Court as Respondents No.1 and 2 did not have *locus standi* as tenants to file the complaint before the learned Additional Sessions Judge.

7. Learned Counsel relied upon *Inayat Khatoon, Mir Sanad Khan v State*[8], *Younas Abbas v Additional Sessions Judge, Chakwal*[9] and *Maqbool Rehman v The State*[10].

8. On the other hand, the learned Counsel for Respondents No.1 and 2, strongly opposed these applications and prayed that they be dismissed with costs. He argued that:

- The words *'may'* used in section 5 of the 2005 Act indicate that the same is not a mandatory provision but rather a directory one to be used by a court of sessions in its aid when needed.

- In the light of the discretionary nature of section 5 of the 2005 Act, the learned Additional Sessions Judge was duly empowered to take cognizance of the case on his own without ordering any investigation and, so, if he appointed another officer to do so, the same was in accordance with the law and will have no bearing on the merits of the second impugned Order.

- The learned Additional Sessions Judge's order appointing an Investigation Officer in the matter was passed well within its jurisdiction and it is in consonance with a reasonable interpretation of section 5 of the 2005 Act in situations where the SHO concerned is found to be an accused.

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[8] PLD 2014 Balochistan 113
[9] PLD 2016 SC 581
[10] 2002 SCMR 1076

- The report of the Investigation Officer is a detailed report extending to over one thousand pages and it has recorded statements of witnesses, conducted spot inquiry, and collected in-depth documentary, oral, photographic and videographic evidence in the matter, meaning thereby that all the ingredients of a full-blown investigation were fulfilled by the Investigation Officer. This Court cannot simply ignore all of that to hold that the Investigation Officer did an inquiry and not an investigation.

- The dispute in the complaint is whether Respondent No.1 was dispossessed illegally from the property or not and this is established through the photographs as well as the report tendered by the Investigation Officer in the matter.

- The complaint against the Applicant was and is maintainable because the sole ingredient to establish for the purposes of cognisance and conviction in a complaint under sections 3 and 4 of the 2005 Act is that a lawful occupant was illegally dispossessed, and the status of the dispossessor is not relevant or material in such cases.

- The alleged sub-letting agreement between Respondent No.1 and one Uqash Ahmed son of Nisar Ahmed is a forged document which has been managed by the Applicant in collusion with the said stranger.

- A complaint under 2005 Act can be filed through an attorney.

- Simply because the complaint was filed by Respondent No.2 is not a material defect and will not bear upon the maintainability of the complaint, as Respondent No.1 herself is also an applicant in the case.

9. In support of his arguments, learned Counsel relied upon *Muhammad Ismail Nizami v Javed Iqbal*[11], *Shaikh Muhammad Naseem v Mst. Farida Gul*[12], *Atta Rasool v Haji Muhammad Rafique*[13], *Javaid Iqbal*

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[11] 2016 SCMR 2039
[12] 2016 SCMR 1931
[13] 2019 PCrLJ 1023

alias Khalid Mahmood v State[14], *Gul Hassan v Zahoor Ahmed*[15] and *Abdul Hafeez v Usman Farooqui*[16].

10. The learned APG, appearing for the State, supported the impugned Orders and argued that the Applicants should avail the opportunity of confronting the allegations made against him at trial. He submitted that the impugned Orders are well-reasoned and do not require any interference.

11. A lot of the Applicant's case lies upon the proposition that, since he is the owner of the property in question, he is not covered by 2005 Act, and because 2005 Act does not apply to him, the learned Additional Sessions Judge's order taking cognisance is *coram non judice* and liable to be set aside. Based on this, his second proposition was that Respondent No.1 was his tenant and allegedly she was a bad tenant who defaulted in payments of rent.

12. To understand whether 2005 Act applies to an owner of a property, one must refer to sections 3 and 4 of 2005 Act which are its substantive provisions. They read:

> **"3. Prevention of illegal dispossession of property, etc.** (1) No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owner or occupier of such property.
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> (2) 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, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provision of section 544A of the Code.
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> **4. Cognizance of offence.**—(1) Notwithstanding anything contained in the Code or any law for the time being in force, the contravention of section 3 shall be triable by the Court of Sessions on a complaint.
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> (2) The offence under this Act shall be non-cognizable.
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> (3) The Court at any stage of the proceedings may direct the police to arrest the accused."

13. It is seen that section 3 of 2005 Act utilises words such as 'no one' and 'whoever' towards a person who commits an offence under

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[14] 2015 YLR 1609
[15] 2010 PCrLJ 1128
[16] 2008 PSC (Crl.) 959

the act, and these words do not make any exception for any person, even if it is the lawful owner of a property. Similarly, section 4 of 2005 Act provides that the offence of illegal dispossession shall be triable on a complaint, and it does not make any specific person, such as a tenant, excluded from its scope. Similarly, 2005 Act makes a distinction between an 'owner' and 'occupier' of a property in sections 2(c) and (d) as well as the following two provisions, i.e. sections 3 and 4 an 'owner' is someone 'who actually owns the property at the time of his dispossession, otherwise than through a process of law' while an 'occupier' is defined as 'the person who is in lawful possession of a property.' It is clear that the term 'occupier' does not exclude tenants, and it does not define the words 'whoever' and 'no one' in sections 3 and 4 in any other way. In the absence of any specific definition, all these words are to be read as per their ordinary English usage, which results in an understanding that, in a complaint under section 3 and 4 of 2005 Act, an owner may very well be an accused, and a tenant may without any problem become a complainant.

14. When a property is let out by its lawful owner to a tenant, that lawful owner surrenders some of his rights in favour of the tenant in exchange of rent or lease money. In other words, the two parties enter into a binding contract of tenancy and, under such a contract, both the parties have their respective rights and obligations which are always and unconditionally subject to law. One of the major rights which an owner surrenders to a tenant, albeit temporarily, is the right to enjoy the possession and amenities from a property legally and lawfully and such a right cannot be taken away except in accordance with the law. In pursuance of a tenancy/lease agreement, when the possession of a property is handed over to a tenant, that exchange of possession is, for obvious reasons, a lawful one, and, as a result, a tenant becomes the lawful occupant of the property with the permission of the owner themselves. A tenant does not remain in the possession of a property free of cost but rather pays rent in exchange of enjoying his or her possession and is as such entitled to the protection of law.

15. A tenant, when in the lawful possession of a property, is entitled to the protection guaranteed by Article 24(1) of the Constitution of the Islamic Republic of Pakistan, 1973, considering that it is a settled principle of law that the provisions of the Constitution, especially

fundamental rights, are to be read progressively and in the widest possible manner. In this respect, reference may be made to *Asad Ali v Federation of Pakistan*[17] and *Sunni Ittehad Council v Election Commission of Pakistan*[18] both of which have been decided by the full bench of Supreme Court of Pakistan. Similarly, and even if in *arguendo* the protection of Article 24(1) is not to be accorded, a tenant is still to be protected under the law in the light of Articles 4, 9 and 14 of the Constitution, which guarantee equal protection of the law, dignity and the right to life. And by no means can it be said that anyone's dispossession without due process is lawful, dignified or not contrary to a person's right to life.

16. When an owner surrenders his or her possession to a tenant, he or she does not have the right to take the same back except through the due process of law. To an owner/landlord of a property, proper remedies to take back his or her possession are available under the Sindh Rented Premises Ordinance, 1979, and, in some cases, under the Specific Relief Act, 1877. The proper course of action to be adopted by a landlord/ owner to dispossess his or her tenant from his or her property is through institution of proceedings before a competent court of law and to obtain the possession of a property through the orders of that court of law. These are the remedies to be invoked by a landlord/owner in the event that he has any claim against a tenant, including default in payment of rent, violation of tenancy terms and conditions or any other lawful grievance.

17. However, the law does not provide the owner of a property with the authority to kick out a tenant through force and without due process, and, when a person, even if an owner, commits the act of illegally dispossessing someone from a property, even if a tenant, then he or she cannot simply escape liability because of their ownership of a property. However, I believe that, in a proper context, an owner/landlord of a property may also become a 'property grabber.' My line of thought here is as follows: when a landlord/owner surrenders their property rights to a tenant, they temporarily no longer possess certain rights in respect of the property, including the right to possession of the property or to enter into a property except in accordance with the terms of their tenancy contract. Hence, if an owner

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[17] PLD 1998 SC 161
[18] PLD 2025 SC 67

enters into their property to unlawfully dispossess a tenant/occupier, then their entry into a property is of such a character as amount to 'grabbing' that property. Therefore, even if a person is an 'owner' of a property under section 2(d) of 2005 Act, they can still become a 'property grabber' for the purposes of 2005 Act, because of not their status but because of the act they commit, i.e. dispossess a tenant who is an 'occupier' under section 2(c) of 2005 Act without the due process of law.

18. I am mindful that there has been great conflict in understanding whether 2005 Act extends to owner/tenant cases. However, this conflict no longer remains after *Shaikh Muhammad Naseem*, which is a judgment by a five-member Bench of the Supreme Court of Pakistan and therefore the authoritative case on the issue. The relevant portion of *Shaikh Muhammad Naseem* reads:

> "7. From what has been discussed above it is evident that no provision of the Illegal Dispossession Act, 2005 imposes any precondition on the basis of which a particular class of offenders could only be prosecuted. The Act aims at granting efficacious relief to lawful owners and occupiers in case they are dispossessed by anyone without lawful authority. Section 3(1) of the said Act by using terms 'anyone' and 'whoever' for the offenders clearly warns all persons from committing the offence described therein and when found guilty by the court are to be punished without attaching any condition whatsoever as to the maintainability of the complaint. So all that the Court has to see is whether the accused nominated in the complaint has entered into or upon the property in dispute in order to dispossess, grab, control or occupy it without any lawful authority. Nothing else is required to be stablished by the complainant as no precondition has been attached under any provision of the said Act which conveys the command of the legislature that only such accused would be prosecuted who holds the credentials and antecedents of 'land grabbers' or 'Qabza Group'."

I may note that in *Shaikh Muhammad Naseem*, the Supreme Court declared two judgments, namely *Bashir Ahmed v Additional Sessions Judge*[19] and *Habibullah v Abdul Manan*[20], where a contrary view favouring the inapplicability of 2005 Act on owners of properties was taken, as *bad law* and therefore no longer binding.

19. The Supreme Court's holding in *Shaikh Muhammad Naseem* also offers clear guidance on the scope of inquiry under 2005 Act. The offence for which 2005 Act penalises an accused person is only

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[19] PLD 2010 SC 661
[20] 2012 SCMR 1533

limited to his act of entering into or upon a property to illegally dispossess its lawful owner or occupier. However, looking at the plain language of 2005 Act itself, it does not look into the past history or background in which an allegedly illegal dispossession of an occupier has taken place. I have already made clear in my discussion above that the legitimate mode of dispossessing a tenant is through proceedings before the competent court of law, and it is not lawful for an owner/landlord to use force or undignified or unlawful means of dispossessing a tenant on their own. I now hold that whether or not a tenant has any liability/dues of rent or they have committed any other unlawful act or contravention of tenancy terms and conditions is totally irrelevant and immaterial for the purposes of establishing the act of illegal dispossession under sections 3 and 4 of 2005 Act. In other words, the offence under sections 3 and 4 of 2005 Act is a crime *per se*, and the act of illegal dispossession in and of itself is a punishable crime for which the background in which such an act was committed are not to be looked at by the trial court.

20. A very specific case on illegal dispossession complaints concerning owner/tenant disputes is *Atta Rasool* which was decided by an earlier single bench of this Court. The Court held:

> "The above principles, so enunciated by apex Court, help me to conclude that the remedy, provided by the Act, cannot be defeated even if the accused comes with any claimed states, including tenant and purchaser even if otherwise the offence, as described in the Act, appears to have been committed i.e. 'dispossession of lawful owner/occupier from immovable property without any lawful authority.' I would respectfully add that in the case of Muhammad Ismail Nizami and another v. Javed Iqbal and another 2016 SCMR 2039, the order of this Court, directing landlord to put tenant into possession under section 7 of the Act, was maintained."

21. Following from that, indeed there may be instances where huge liabilities lie upon tenants, but to that end the law provides an efficacious remedy, and for all that matters, this would not entitle any owner to assume the role of a civil court or of a law enforcement agency. Without any doubt, an owner of a property has valuable rights in it and is entitled to protect his ownership and rights, but this has to be done through the channels provided in law. Therefore, if in the present case any amount of dues/arears remain(ed) against Respondents No.1 and 2, then the Applicant had all rights to recover those dues and take his

possession back subject to law, but in no other way could he do so, much less in a way which carries the wrath of the law.

22. The interpretation which the learned Counsel for the Applicant's arguments entails that every landlord/owner of a property has a clean-chit and that they are free from liability even if illegal dispossession on their part is proven. With all due respect, if this interpretation is adopted, then its consequences are only going to be worrisome, because then floodgates of cases where tenants are kicked out on the pretext of non-payment of rent or for some other allegations are going to open, leading only to an increasing number of wrongful dispossession cases and other possible criminal acts carried out in pursuance thereof.

23. As such, I believe it is only reasonable to interpret 2005 Act as applicable in all cases of illegal dispossession, even if an accused is the owner of a property and the person who alleges illegal dispossession is the tenant. This interpretation appeals not only reason but is also supported by the Supreme Court's authoritative pronouncement in *Shaikh Muhammad Naseem* and this Court's earlier judgment in *Atta Rasool.*

24. The next contention on which the Applicant's case rests is that the learned Additional Sessions Judge exceeded his jurisdiction when he appointed a Deputy Superintendent of Police (DSP) to conduct the investigation of the complaint when the language of section 5 of the Act plainly states that the investigation is to be conducted by the officer-in-charge of a police station.

25. For convenience, section 5 of 2005 Act concerns the investigation and procedure in a complaint under the said Act and it reads:

> "**5. Investigation and procedure.—**(1) Upon a complaint the Court **may** direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court:
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> Provided the Court may extend the time within which such report is to be forwarded in case where good reasons are shown for not doing so within the time specified in this sub-section;
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> Provided further that **whenever** a local inquiry **is necessary for the purpose of this Act**, the Court **may** direct a Magistrate or a revenue officer in the district to make an inquiry and submit

report within a period as may be specified by the Court. The report of the Magistrate or revenue officer, as the case may be, shall be construed as evidence in the case.

(2) On taking cognizance of a case, the Court **shall** proceed with the trial from day to day and shall decide the case within sixty days and for any delay, sufficient reasons **shall** be recorded.

(3) The Court **shall** not adjourn the trial for any purpose unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment **shall** in any case be granted for more than seven days.

(4) On conclusion of the trial, if the complaint is found to be false, frivolous or vexatious, the Court **may** award compensatory cost to the person complained against which **may** extend to five hundred thousand rupees."

26. In legislative language, the word 'may' reflects conveyance of discretion to an authority, and wherever 'may' is used, this means that such a provision is discretionary and not mandatory. However, the word 'shall,' wherever it is used, is always considered to be conveying a mandate and the provision in which 'shall' is used is always considered to be mandatory. Without doubt, there may be exceptions, but this is the strict general rule which must be followed unless convincing legal material is shown to establish the opposite. It is not reasonable to assume that, absent very convincing material, the legislature used 'may' to say 'shall' and used 'shall' where it really meant to say 'may.'

27. This has been dealt with by the Supreme Court in *Abu Bakar Siddique and others v Collector of Customs, Lahore and others*[21]. The Court there was concerned with understanding the nature of section 181 of the Customs Act, 1969, which concerns the option to pay fine in lieu of confiscated goods. Having considered the difference between the legislature usage of 'may' and 'shall,' the Supreme Court held:

> "9. ...It is well-settled that word 'may' is discretionary and an enabling word and unless the subject-matter shows that the exercise of power given by the provision using the word 'may' was intended to be imperative for the person to whom the power is given, it might not put him under an obligation to necessarily exercise such power but if it is capable of being construed as referred to statutory authority, it will not be entirely for such person to exercise or not to exercise the power given to him under the law. The use of word 'may' in the statute in the plain meanings is to give discretion to the public authorities to act in their option in the manner in which such authorities deem proper but if the public authorities are authorized to discharge their functions in their option in a positive sense, the word 'may' used

[21] 2006 SCMR 705

> in the provision would be suggestive of conveying the intention of legislature of imposing an obligation. The word 'may' usually and generally does not mean 'must' or 'shall' but it is always capable of meaning 'must' if the discretionary power is conferred upon a public authority with an obligation under the law. The word 'may' is not always used in the statute with the intention and purpose to give uncontrolled powers to an authority rather oftenly it is used to maintain the status of the authority on whom the discretionary power is conferred as an obligation and thus, the legislative expression in the permissive form, sometimes is construed as mandatory. It is, however, only in exceptional circumstances in which a power is conferred on a person by saying that he may do a certain thing in his discretion but from the indication of the relevant provisions and the nature of the duty to be done, it appears that exercise of power is obligatory..."

Another case on a similar footing is *The Collector of Sales Tax, Gujranwala and others v Messrs Super Asia Mohammad Din and sons and others*[22].

28. In another case, *Syed Qadar Dad and others v Muhammad Afzal and others*[23], the Supreme Court was to decide whether r. 24 of O. XLI of the Civil Procedure Code, 1908[24], was a mandatory or a directory provision granted that the word 'may' was used by the legislature. The Court held that the word 'may' used in r. 24 of O. XLI of the CPC made the said provision discretionary and not mandatory. I believe that r. 24 of O. XLI of the CPC is set up in a somewhat similar manner to section 5(1) of 2005 Act, with which I am presently concerned. For reference, r. 24, as it then was, read:

> "24. Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellant Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds."

The observations of the Supreme Court in this regard are very relevant. It held:

> "11. ...The use of the word 'may' indicates that it is not mandatory but is discretionary. The Court in a fit case may decide the appeal on merits without remanding the case to the trial Court. There is no doubt that that the latter course of action curtails the prolongation of the agony of the parties and the Appellate Court should prefer the above course of action. However, the failure on its part cannot vitiate the order of remand particularly when there is a justifiable reason."

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[22] 2017 SCMR 1427
[23] PLD 1997 SC 859
[24] "CPC"

29. Section 5(1) of 2005 Act utilises the word 'may' in relation to appointing an investigation officer. Similarly, the second proviso to section 5(1) uses the words '*whenever* a local inquiry *is necessary* for the purpose of this Act'. On the other hand, in section 5(2) and (3) the words 'shall' are constantly used and then again in section 5(4), when 2005 Act talks about imposing compensatory costs, the word 'may' is utilised. This goes on to show that the words in section 5 of 2005 Act have been very carefully and cautiously picked and used to clearly reflect the intent of the legislature. There is a deliberate difference in the choice of words within the different subsections of section 5 to reflect that the legislature intended to use the words 'may' and 'shall' differently in 2005 Act.

30. This was also considered by Munib Akhtar, J., of this Court, who has since been elevated to the Supreme Court of Pakistan, in *Gul Hassan*. In that case, the concerned trial Court had taken cognisance upon a complaint under the 2005 Act without holding investigation under section 5(1). The Court was thus required to decide whether the order taking cognisance against the accused in that case without having appointed an investigation officer was a legal order. Munib Akhtar, J., held:

> "Section 202 is itself a directory provision, which enables the Court taking cognizance of a complaint to conduct (or have conducted) an inquiry or investigation and sub-section (2) specifically empowers a Court of Session to have an investigation carried out by a Magistrate. However, it is to be noted that the remit of such an inquiry or investigation is limited to 'ascertaining the truth or falsehood of the complaint.' The provisions of section 5(1) are broader, and empower the Court to have the matter investigated for any purpose as may relate to the complaint and be germane or relevant under 2005 Act. In my view when section 202, Cr.P.C. and section 5(1) of the 2005 Act, are considered and read together, the legislative intent behind the latter provision is clear. Both are directory and enabling and not mandatory provisions...The enabling provision of section 202 of course remain available to the Court under the 2005 Act by virtue of section 9. Now in addition thereto a further power has been conferred on the Court by means of section 5(1) to have if the Court so deems appropriate, an investigation carried out by the SHO concerned in respect of the complaint on any matter as may be relevant or germane for purposes of the 2005 Act (and not only or the purposes laid down in section 202, Cr.P.C.).
>
> ...
>
> **In view of what has been stated above I hold that section 5(1) of the 2005 Act is directory in nature. It is not mandatory for**

the Court to have an investigation conducted under that provision before proceeding further in the matter. The impugned order does not therefore suffer from any illegality on that count. Because of that view that I have taken of the matter it is not necessary for me to consider the question of maintainability of the present applicant. The application being without merit is hereby dismissed."

31. A similar view comes from the Supreme Court's judgment in *Waqar Ali v The State*[25], where it was observed that:

> "11. The aim of directing an investigation by the police is not to add to the allegations or grounds raised in a complaint. The purpose of such investigation, if resorted to by the trial Court, is to inquire into the correctness of allegations made in the complaint itself. The Court need not order investigation under section 5 of the Act if it concludes from the complaint and the material furnished by the complainant in support thereof, that all essential elements of an offence under section 3 ibid are or are not, sufficiently disclosed and established..."

32. In my view, the legislative intent behind section 5(1) is obvious and has already been established. It is that a court seized of a complaint under 2005 Act be properly guided in deciding the maintainability of such a complaint and thus to approach the complaint properly, judiciously and in a fair manner for the sake of both the parties involved. It ensures that a court is guided and assisted in determining if a complaint for illegal dispossession alleges a cognisable case or if it does not. Consequently, if, in exercising its judicial wisdom, a court finds that such a step is not called for, and that the material brought on the record by a complainant party is sufficient to establish a cognisable case, then without any doubt a court has the authority to take cognizance under sections 3 and 4 of the 2005 Act and proceed to try the accused party. This, again, is something a court must consider and decide in the circumstances of each case using its judicial discretion in a sound and reasonable manner.

33. The problem however arises where, as here, the 'officer-in-charge' (or the Station House Officer of a police station) concerned is himself an accused party in an illegal dispossession complaint. Without a doubt he will not conduct an investigation against himself. The learned Counsel for the Applicant argued that, in the event that some other officer was necessary to be appointed, then it should have been the SSP concerned, while the learned Counsel for Respondents No.1

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[25] PLD 2011 SC 181

and 2 contended that the learned Additional Sessions Judge was right in appointing a DSP in its judicial discretion. The learned Counsel provided alternative options, but the question ultimately is, who, if not the officer-in-charge? Will it be some other officer-in-charge? Or an officer of a senior rank? Who will it be?

34. In this respect, this case is one of first impression as it appears to be the first time that this Court has been confronted with a clear gap in section 5(1) of 2005 Act whereby the situation with which this Court is presently concerned has clearly not been envisioned or provided for. Section 5(1) thus calls for interpretation to understand what must be done. In doing so, the elementary principle of law, that no one can be a judge of his or her own cause[26], must be kept in mind.

35. There are four rules of statutory interpretation which our jurisprudence recognises: **(i)** the literal rule, **(ii)** the golden rule, **(iii)** the mischief rule, and **(iv)** purposive approach. For my purposes, the first two rules are relevant; I will not indulge in academic discussion on the other two.

36. In situations where the language of a statute is clear and unambiguous, the law is well settled. In such an event, the plain language of the statute must be adopted and it will then not be for a court to look deeper or make any assumptions. This is known as the *literal rule* of interpretation which does not permit a court to go beyond the ordinary meanings of a statute when its language is clear and unambiguous. This was held in *Islamabad Electric Supply Company Limited (IESCO) v The Appellate Tribunal Inland Revenue (HQ), Islamabad*[27]:

> "10. ...The well recognized rule of construction or interpretation of any statute or its particular provision is that the intention of the legislature must be discovered from the words used. If the words used are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical construction. If the words of a statute or its any provision are readily understood without any ambiguity, then obviously, it is not for the court to raise any doubt as to what they mean for any contrary view, rather than implementing the same without any hesitation."

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[26] *Suo Motu Case No. 4 of 2010* PLD 2012 SC 553
[27] 2023 SCMR 1516

In making this decision, the Supreme Court placed reliance on *Fawcett Properties v Buckingham County Council*[28]. In it, it has been very aptly held:

> "when a statute has some meaning even though it is obscure, or several meanings, even though there is little to choose between them, the courts have to say what meaning the statute is to bear, rather than reject it as a nullity."

For obvious reasons, namely that in the present case the language of section 5(1) of 2005 Act on the issue is unclear, this interpretative instrument cannot be applied.

37. The next rule of interpretation of statutes is known as the *golden rule*, which is utilised when applying the literal rule does not result in a conducive interpretation. It provides that, when an ordinary reading of the statute under the literal rule causes an absurd or unjust conclusion to be reached. An example of this rule being applied is seen through *Re Sigsworth*[29]. In that case, a son murdered his mother, who died intestate. In the light of an ordinary reading of the applicable law, a murderer stood to inherit from the same person—his mother—who he had killed. The court considered that this was an unjust and absurd conclusion and, consequently, it departed from the literal rule and held that he was not entitled to anything from his mother's estate.

38. The golden rule advances the purposes and intent of a statute in a more proper and conducive way when on its face reading the results appear to be absurd and unintended. It permits a court to look deeper into the intent of the legislature through reading the entire legislation as a whole and thereby to find a just, fair and conducive interpretation of an otherwise confusing provision. This rule has since been recognised in our jurisprudence as well. For example, in *Mehar Khan v Yaqub Khan and another*[30], the question before the Supreme Court of Pakistan was about the correct interpretation of section 344(1) of the Cr.P.C. The Court applied the golden rule in interpreting section 344(1) of the Cr.P.C. and held that:

> **"No doubt the elementary rule of construction is that the words used in a statute should be construed literally but according to what is termed as the 'Golden Rule of Interpretation' by Maxwell, the ordinary meaning of a word**

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[28] [1961] AC 636
[29] [1935] 1 Ch 98
[30] 1981 SCMR 267

need not be adhered to if a construction based on it would be at variance with the intention of the Legislature as collected from the statute itself or it leads to an absurdity. In such cases the language may be varied or modified so as to avoid absurdity or inconvenience Beek v. Smith ((1835) 2 MW 191). While interpreting the statutes like the one before us, the proper mode of interpretation or discovering the true intention of the Legislature would be to consider as to what was the state of law before the statute or its provision was given its present form and as to what was the mischief or difficulty which was sought to be suppressed and remedy which the Legislature had intended to advance. Ref—Abdul Majid Khan v. Chief Settlement and Rehabilitation Commissioner (PLD 1968 SC 154); Divisional Superintendent, P.W.R. v. Bashir Ahmed (PLD 1973 SC 589) and Rabnawaz v. Jahana (PLD 1974 SC 210) and Maxwell on the Interpretation of Statutes, 12th Edn. at p. 40."

39. Thus, in utilising the golden rule, a court can look into the intent of a legislation or a provision within that legislation and ultimately ascribe to it a fair and appropriate interpretation as would advance the objects of that provision of legislation. I believe this rule can more appropriately be applied to the present case, where a plain reading of section 5(1) is creating an absurdity. On a literal reading of section 5(1), an uncomfortable balance appears between conferment of discretion and conveying a mandate. It would be strange (and indeed, with due respect, absurd) that, while a court hearing an illegal dispossession complaint has the discretion to hold or not to hold an investigation, if it decides that an investigation is needed, then the officer-in-charge of a police station must only do it. Such a reading of section 5(1) would mean that where, as here, the officer-in-charge of the police station himself is an accused in a complaint under 2005 Act, the Court would essentially have its hands tied between either conducting investigation through an interested officer or not conducting one at all. This would render section 5(1) effectively redundant.

40. I have already held that, in enacting section 5(1), the legislative intent was to ensure that a court seized of a complaint for illegal dispossession is assisted and guided in finding if a cognisable case is made out against the accused party. In my opinion, the ultimate purpose that section 5(1) accomplishes is to meet the ends of justice and to ensure fair play for both the parties—the complainant and the complained. Indeed, it will be unreasonable to assume that only the 'officer-in-charge' of the police station concerned can be appointed as an investigation officer, when to meet the ends of justice and to have a fair investigation of a case the requirement is that some other competent

officer be appointed instead of an SHO. Looking from this angle, and considering the purpose of section 5(1) to have, when needed, a tentative but fair appraisal of a complaint for illegal dispossession, I believe and accordingly hold that, when the demand of justice, reason and propriety is that some police officer other than an SHO/officer-in-charge of the concerned police station hold an investigation under section 5(1), then it lies well within the discretion of the court of session to appoint another police officer which, in the court's opinion, is competent and impartial to hold an investigation and to submit his report.

41. I do not agree with the learned Counsel for the Applicant in his argument that, if at all necessary, the Senior Superintendent of Police concerned should have been appointed as an Investigation Officer and he should have investigated the complaint. Learned Counsel grounded his argument in the accusation that Mr. Siraj Lashari, DSP, was appointed as an investigation officer in the absence of the Applicant and therefore it must be presumed that his appointment was made on the whims and wishes of Respondent No.1. However, the first impugned Order reveals that the arguments advanced by the counsel for Respondents No.1 and 2 before the learned Additional Sessions Judge were that the concerned police officers were themselves accused in the matter and so *any other honest* police officer may be appointed. The decision to appoint the Investigation Officer in the matter was the learned Additional Sessions Judge's own decision and was taken by him in exercise of his discretion. The Applicant's case alludes to partiality and unfairness on the part of the learned Additional Sessions Judge who as per the Applicant conducted his judicial business at the whims of the Applicant, which is a serious matter, and it was for the Applicant to substantiate his claim through cogent evidence rather than arguing for a presumptive conclusion.

42. The arguments of the learned Counsel for Respondents No.3 and 4 is that the first impugned Order appointing the Investigation Officer utilises the words 'inquiry/investigation'; that both these words are legally different and entail different consequences and, therefore, the first impugned Order is a void Order for ordering an inquiry to be held when section 5(1) makes it clear that an investigation, and not an inquiry, is to be done. It is not deniable that the first impugned Order

has utilised the words 'inquiry/investigation' instead of simply mentioning 'investigation' in respect of the appointment of Mr. Siraj Lashari, DSP, as Investigation Officer in the matter.

43. In this respect, the counsel for the respondents No.1 & 2 argues that this Court must look into the substance and the consequences of the first impugned Order and the conduct of the Investigation Officer in view of it. In the present case, it appears that the report of the Investigation Officer is well over one thousand pages along with annexures; the Investigation Officer has gone to great pains in complying with section 5(1) of 2005 Act including by recording statements of concerned persons including the accused and the complainant's side as well as witnesses, conducting spot inquiry, collecting videographic, photographic, documentary and oral evidence and then giving his opinion on whether a case for cognisance is or is not made out against the Applicant and other accused. All of this is done as a part of an investigation, which is defined in section 4(l) of the Cr.P.C. as including:

> "All proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

The steps taken by the Investigation Officer in tendering his report do not conform with the definition of an "inquiry" as per section 4(k) or 202 of the Cr.P.C; hence, his report cannot be construed as an "inquiry" rather than an investigation in compliance of section 5(1) of 2005 Act. For reference, section 4(k) of the Cr.P.C. reads:

> "'Inquiry' includes every inquiry other than a trial conducted under this Code by a Magistrate or Court."

The distinction between an inquiry and an investigation is highlighted in *Mir Sanad Khan* cited by counsel for the respondents No.3 to 5. The relevant part of the judgment is paragraph 5, which reads:

> "5. ...The inquiry is by Magistrate, whereas the investigation is by police or any person other than a Magistrate or Court. The object of investigation is collection of evidence, but that of an inquiry is determination of truth or falsehood of certain allegations in order to further action. Similarly, inquiry is something different from trial, when the former stops, the latter begins...."

44. I believe a whole series of judicial proceedings conducted by the learned Additional Sessions Judge as well as the investigation

proceedings done by the Investigation Officer cannot be ruled out or considered as illegal. It is not the case that the learned Additional Sessions Judge specifically directed that an "inquiry" be done alone; his Order shows that the words "inquiry/investigation" has been used interchangeably and ultimately indicates his directions to fulfil the demand of section 5(1) of 2005 Act.

45. It was furthermore argued by the Applicant's side that the Investigation Officer's report in the matter would be construed as evidence against him at trial. I believe this arguments is a result of confusion between section 5(1) and its second proviso, which, at the cost of some repetition, reads:

> "Provided further that **whenever** a local inquiry **is necessary for the purpose of this Act**, the Court **may** direct a Magistrate or a revenue officer in the district to make an inquiry and submit report within a period as may be specified by the Court. **The report of the Magistrate or revenue officer, as the case may be, shall be construed as evidence in the case."**

46. The distinction between section 5(1) and its second proviso is unambiguous. On a plain reading of the two, it becomes clear that a report of investigation under section 5(1) is to be used for the purposes of taking cognisance, but it is not to be used as evidence. However, a local inquiry report under the second proviso, which is tendered by a Magistrate or a revenue officer, is to be construed as evidence. The section and proviso at issue are totally independent and distinct and do not call for being mixed up. Investigation Officer's report will not be construed as evidence in the matter subject to general rules of criminal evidence, however, should the learned Additional Sessions Judge direct a local inquiry in his discretion, a report tendered thereupon will be used as evidence in terms of the second proviso to section 5(1) of 2005 Act. There is no other possible reading of section 5(1).

47. The Applicant's next contention, out of which the fourth question of law in this case arises, is that the complaint against him was not maintainable because it was filed through Respondent No.2 as Respondent No.1's Attorney and not by Respondent No.1 herself. It was contended that Respondent No.1 was the tenant of the Applicant and, if the alleged illegal dispossession took place, the only person to suffer was Respondent No.1. It was also contended that, in criminal

jurisprudence, there is no concept of initiating proceedings through Attorney.

48. Our law does in fact recognise filing of criminal complaints through an aggrieved party's attorney, under certain circumstances. The wisdom behind this is that criminal law permits not just the aggrieved person him or herself but also any other person who is aware of a criminal act to report the same and bring it to the knowledge of the competent forum. In my view, when and if the act of illegal dispossession takes place, and merely an onlooker witnesses that incident taking place, the law cannot prevent him from reporting the occurrence to the court of sessions under sections 3 and 4 of 2005 Act. In this respect, again, the language of sections 3 and 4 comes to play as it provides clearly that the offence of illegal dispossession is triable upon complaint, but it is nowhere provided that such a complaint is to be made by only the person aggrieved and by no other person. Illegally dispossessing someone from a property is a criminal offence, and just like any other crime, the law makes no distinction in these cases; any person who witnesses the offence and is aware of it can report it.

49. An Order taking cognisance in an illegal dispossession case is a tentative order and it only holds that a *prima facie* case has been made out against the proposed accused in the case. Therefore, by virtue of such an order, the court initiates trial upon the illegal dispossession complaint whereupon both the parties—the complainant and the accused—are bound to record their evidence and prove their case. An order taking cognisance, by its very nature, does not assume the Accused as conclusively guilty, just like an order granting bail which does not assume that an accused is conclusively innocent. Indeed, at the conclusion of a trial an accused may be found guilty and therefore punished. However, the opposite, namely the accused being found innocent and being awarded special costs under section 5(4) of 2005 Act, is equally possible.

50. In essence, taking of cognisance is a premature stage in a complaint for illegal dispossession, at which point no outcome of the case can be assumed. All of it comes down eventually to the evidence recorded by the parties through which the guilt or innocence of the accused can be established. An accused, unless proven guilty at trial, is always treated as innocent as of right.

Conclusion

51. In view of my discussions above, I conclude as follows: **(i)** 2005 Act is a special law and will prevail over general law, including the Cr.P.C., wherever there is inconsistency; **(ii)** 2005 Act applies with equal force to every person without any distinction, and everyone, including the owner of a property, is duly covered by 2005 Act if they dispossess any lawful occupant of the property, such as a tenant; **(iii)** The offence of illegal dispossession under sections 3 and 4 of 2005 Act is a crime *per se* in which a court is not to concern itself with the background in which an accused committed that offence. It is not material that the otherwise lawful occupant has any liability upon him or her or that he or she is liable to vacate the premises, because to seek recovery of dues and/or possession, the law provides proper remedies which the aggrieved party must invoke. If the act of an accused is covered by sections 3 and 4 of 2005 Act, then a complaint is maintainable; **(iv)** section 5(1) of 2005 Act is discretionary in nature and does not bound a court to hold investigation where sufficient material is already available to it for the purposes of seeing whether cognisance is or is not to be taken; **(v)** in a complaint under 2005 Act, where the 'officer-in-charge' of the police station concerned is himself an accused party or if there is any allegation against him, then discretion lies with the court to appoint some other police officer who, in the intelligent opinion of the court, is competent and will ensure an impartial investigation. The test of who is or is not competent to investigate the matter under section 5(1) is to be undertaken by a court by exercising sound judicial discretion and in line with the settled principle of law that no one can be a judge of his or her own cause; **(vi)** No party is entitled to advise a court as to how it should or should not perform its discretionary judicial functions, including the appointment of an Investigation Officer under section 5(1) of 2005 Act; **(vii)** in the situation highlighted above, if a court in its discretion appoints some other police officer to investigate a complaint for illegal dispossession, then that exercise of judicial discretion must be respected, unless clear material is shown to establish it is unlawful or beyond merit; **(viii)** In criminal law, an attorney who is also a witness, and therefore directly aware, of an incident is entitled to make a complaint; **(ix)** an order taking cognisance under section 4 of 2005 Act does not assume any guilt on the part of the accused but it merely takes the matter to trial where an opportunity is provided to both the

parties to prove/disprove the case alleged; **(x)** the report of investigation under section 5(1) of 2005 Act is not to be construed as evidence at trial, but a report by a Magistrate or a Revenue Officer under the second proviso to the said section is to be construed as evidence; **(xi)** however, in order to meet ends of justice the report of DSP Siraj Lashari is not to be considered at any stage of trial due to bias attributed to it by the Counsel for Applicant as well as Counsel for Respondent Nos.3 & 4 to ensure fair trial.

52. I believe that the impugned Orders are strong on law and do not call for interference. Therefore, both these criminal revision applications are dismissed, and any listed interlocutory applications are accordingly disposed of. There is no order as to costs. The learned Additional Sessions Judge/Model Criminal Trial Court-I, Hyderabad, who is seized of the case is directed to ensure compliance of sections 5(2) and (3) of 2005 Act and to ensure fair trial under Article 10-A of the Constitution to both the parties.

53. I have avoided to touch the factual allegations made by the parties which are to be proven/disproven at trial but, out of caution, I clarify that any factual observations in this order are tentative in nature and should not influence the learned Trial Court in finally disposing of the case.

54. Before parting, I am grateful to the learned Counsel for the parties who thoroughly assisted me in determining the complicated questions of law involved in this case.

JUDGE