

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Syed Fiaz ul Hassan Shah

Criminal Revision Application No.150 of 2023

Applicant : Ali Ahmed son of Ghulam Rasool
through Mr. Khwaja Saiful Islam,
Advocate

Respondents 1&2 : Aqeel Ahmed s/o Ghulam Rasool &
Shabana w/o Aqeel Ahmed through
Mr. Zulfiqar Ali Abbasi, Advocate

For State:
through Ms. Seema Zaidi, Addl. PG Sindh

Date of hearing : 09.7.2025

Date of order : 09.7.2025

ORDER

DR. SYED FIAZ UL HASSAN SHAH, J -- Through this Cr. Revision Application, the applicant has impugned the Order dated 11.7.2023 passed by learned Additional District & Sessions Judge-XI, Karachi (West) in Complaint No.17 of 2023, whereby the Complaint filed by the applicant was dismissed.

2. Brief facts of the case as per the application/complaint are that the complainant is lawful owner of immovable property i.e. Plot No.140, Street No. 14-D, Orangi Town, Karachi. That the complainant was enjoying the peaceful bonafide and lawful possession of the property (hereinafter referred to as said property) Number/Entry of above said property in the Water & Sewerage Bill, Gas Bill, Electricity Bill. That the respondent No.1 und 2 used to jointly reside at the said property but in the month of July, 2022, the respondents asked the Complainant to leave the said premise for want of renovation works. Later, in the first week of July, 2022, 8 to 10 persons visited the said property and informed the complainant that they will have to start renovation work of the said property as the Respondents

had directed them to do so. That on July 19, 2022 the respondent No. 1 & 2 along with two three labors, forcefully and without the consent of complainant, possessed the complainant and his family by shifting all the utensils within the said property and thereafter the respondent's family again shifted in the said property and had not allowed the complainant to enter in the said property. The said forceful act of respondents clearly shows the gross malafide just to usurp the said property. That the complainant approached, the respondent No.3 for providing necessary protection and to take legal action against the respondents No.1 & 2 but he did not respond and avoided to take any legal action against such goons. The Complainant has left with no other option but to knock the door of Court for protection of life and property. The Complainant apprehended that the Respondent would change the infrastructure of said property as well as through manipulation and fraud and would manage title documentation whereas the official respondent No.3, who being functionaries of the state are duty bound to protect life and property of the Applicant/Complainant. On this ground the Complainant filed complaint under Section 3 of the Illegal Dispossession Act, 2005, which has dismissed through impugned Order.

3. Learned counsel for the applicant contends that applicant filed complaint No. 206/2022 under section 3 of Illegal Dispossession Act 2005 which was withdrawn on 6.12.2022. He states that there is no embargo to file a subsequent complaint as neither charge was framed nor evidence was recorded and early complaint was withdrawn bonafidely in view of the negotiations with the respondents, who is the brother of the appellant.
4. On the other hand, learned counsel for the respondents has drawn my attention towards various documents which include the Citizenship Certificate Form P-1 issued in 1980 so also utility bills pertaining to KW&SB and claims that the property is belonging to their father since 1974 but the appellant has managed to procure the leasehold rights of the property behind the back of the Respondent who is the real brother of Appellant.
5. I have considered the arguments advanced by the learned counsel for the parties, Addl. P.G Sindh and with their assistance perused the record.

6. I have considered the arguments of the parties. Learned counsel for the appellant states that the appeal was not decided on merits as neither charge was framed nor evidence was recorded. The Illegal Dispossession Act, 2005 does not provide provisions of withdrawal of complaint or its effect, however, section 9 of the said Act provides that the Criminal Procedure Code, 1898 shall apply to the proceedings under the said Act.
7. The factual matrix unequivocally establishes that the earlier complaint was disposed of under Section 248, Cr.P.C., and the instant complaint has been filed on the same set of facts and against the same accused persons. The maintainability of the second complaint is premised on the legal proposition that the law does recognize the filing of a subsequent complaint, even after dismissal of the first complaint under Section 203, Cr.P.C., albeit as an exception. It is imperative to distinguish the legal consequences of a dismissal during preliminary proceedings under Chapter XVI of the Code from those arising after cognizance is taken under Chapter XVII. In the former, the proceedings remain confined to the Court and the complainant, with no right of participation accorded to the accused, whereas in the latter, the Court assumes cognizance and summons the accused to face trial, thereby engaging the protections under Article 13 of the Constitution and Section 403, Cr.P.C. In support of this distinction, reference is made to the authoritative pronouncement in *Azmat Bibi v. Asifa Riaz* (PLD 2002 SC 687), wherein the Hon'ble Supreme Court held that the dismissal of a complaint prior to cognizance does not bar the filing of a second complaint, provided the earlier proceedings did not culminate in acquittal or conviction. Accordingly, the instant complaint, having been filed subsequent to a withdrawal under Section 248, Cr.P.C., and prior to the accrual of any statutory bar, is not hit by the doctrine of double jeopardy and may proceed subject to judicial scrutiny. The relevant portion of said ruling is re-produced:

“7.It is in fact relates to the preliminary proceedings under sections 200 and 202 of the Code and according to the provisions the person complained against has no right of participation, until a cognizance is taken into the matter and is summoned.

8. The purpose of the preliminary proceedings under Chapter XVI of the Code is to ascertain the veracity of the accusation made in the complaint, which is to be tested through evidence adduced by the complainant.

The learned Magistrate, if having examined the complainant under Section 200, Cr.P.C., and thereafter witnesses, found a prima facie case and accordingly took cognizance of the matter, issuing process against the accused. This procedural milestone brings into operation the provisions of Chapter XVII, whereby the Court assumes cognizance and summons the accused to face trial. Consequently, the provisions of Chapter XX become applicable, governing the trial of the accused so summoned. It is at this juncture that the constitutional protection against double jeopardy under Article 13 of the Constitution and the statutory bar under Section 403, Cr.P.C., become operative. The legal implication is that once cognizance is taken and process issued, the accused stands formally involved in the proceedings, and any subsequent withdrawal under Section 248, Cr.P.C., is not a matter of mere volition of the complainant. Rather, it requires the complainant to satisfy the judicial conscience of the Court that sufficient grounds exist for such withdrawal. The provision mandates that upon such permission being granted, the accused shall be acquitted. The language of Section 248 is unequivocal: while the Court retains discretion to permit withdrawal, it is under a statutory obligation to record an acquittal once such permission is granted. The provision of section 248 is reproduced for better understanding:

“248. Withdrawal of complaint. If a complainant, at any time before a final order is passed in a case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint the Magistrate may permit him to withdraw the same and shall thereupon acquit the accused”.

9. The above had been the legal reasons and exceptions because of which there is a view of competence of second complaint in cases the disposal whereof is made in former cases. Here, I would also add that a disposal/dismissal of complaint before reaching to section 203 Cr.PC would, even, not operate as that of dismissal under section 203 Cr.PC because there can be no dismissal under section 203 Cr.PC without consideration of all material came to surface during preliminary investigation/inquiry process commencing from Section 200 to 202 Cr.PC. Therefore, dismissal for any reason before exercise of Section 203 Cr.PC would not stand as a bar to filing of second complaint on same facts. I am conscious that filing of second complaint after dismissal of earlier under section 203 Cr.PC, being on same facts and against same accused, is

permissible only in exceptions which, being detailed in the case of ***Zahoor & another v. Said-ul-Ibrar & another*** 2003 SCMR 59. The same reads as:

“9. Before arriving at a definite conclusion, we first refer to the contents of section 200 to 203 Cr.P.C that exclusively deal with the matter of private complaints. Section 203 Cr.P.C clearly lays down that a Court which is seized of a matter under section 200 Cr.P.C. may dismiss the complaint, if, after considering the statement on oath of the complainant and the result of investigation or inquiry under section 202 Cr.P.C., there is in its judgment no sufficient ground for proceeding further. The Court, in these circumstances, is bound to give reasons as well for such dismissal. The section categorically provides the application of mind by the Court to the statement on oath of the complainant as well as to the result of the investigation or inquiry ordered to be conducted under section 202 Cr.P.C. Meaning thereby, that the dismissal is not in routine but with the positive application of mind to the facts and circumstances of the case. This is further highlighted by the words “in his judgment” appearing at the end of section 203 Cr.P.C. The Court is required to evaluate the evidence and to make a judgment thereon in order to hold whether or not sufficient grounds exist for proceeding further. We hold a tentative view that when once a matter is dismissed after appreciation of statement on oath and the result of inquiries etc, the complainant should not be allowed to vex, the respondent time and again particularly when such judgment of the trial Court contains the narration of sufficient grounds for not proceeding further.”

“10. On the other hand, we are also alive to the fact that at times extremely perverse orders are passed by the trial Courts which are apparently without jurisdiction. In such rare and extraordinary circumstances, strictly adhered to by the Courts below, the complainant should be allowed to file a fresh complaint after dismissal of one under section 203 Cr.P.C. Such circumstances are aptly laid down by the Indian Supreme Court as reproduced above. We feel that in the given circumstances, the filing of fresh complaint should not be a bar for the complainant. This is particularly so because in the sections concerned there is no specific bar as observed by the Indian Supreme Court also. It is also pertinent to note that upto the state of section Cr.P.C, the accused is not yet summoned. Taking analogy from such section as well as from observations with reference to section 203 Cr.P.C, we hold that in the extraordinary circumstances referred to above a fresh complaint should not be barred if the one already filed is dismissed under section 247 Cr.P.C.

10. The impugned Order does not speak about issuance of summons at any earlier stage or while permission to withdraw complaint about acquittal of the Respondent. Therefore, the complainant may file complaint, however, he would have to demonstrate that either he is lawful owner or the bonafide occupier of the premises, and that the Respondent has involved in the

commission of offence of illegal dispossession or unlawful occupation that may put law into motion by showing that the criminal intent and such culpability would have to be considered by the criminal court trying the said complaint in the light of dictum laid down by the Hon'ble Supreme Court in its authoritative case reported as in *Gulshan Bibi v. Muhammad Sadiq & another* (PLD 2016 SC 769), the Hon'ble Supreme Court, while interpreting the scope of the Illegal Dispossession Act, 2005, authoritatively held that the application of the Act is not confined merely to cases involving the so-called "Ghunda" element or notorious land grabbers. Instead, its operation extends to all instances where a person has been unlawfully or illegally dispossessed from immovable property, irrespective of the character or background of the dispossessor. The Hon'ble Court emphasized that the protective mechanism enshrined in the Act is meant to be invoked wherever illegal occupation or control and/or forcible dispossession has occurred, thereby reaffirming the broader remedial spirit of the legislation. The relevant portion is reproduced:

"8. In view of the above discussion we conclude that in any proceedings initiated under Illegal Dispossession Act, 2005, the issues which fall for decision would be whether the offence against a lawful owner or occupier, as described in the complaint, has taken place and whether it is the accused who has committed it without any lawful authority. Anyone found committing the offence described in Section 3 would be amenable to prosecution under the provisions of Illegal Dispossession Act, 2005 and no past record of the accused needs to be gone into by the court."

11. In summation, it may be observed that the contention raised by learned counsel for the Respondent that the Act has enacted in 2005 and dispute pertains to property obtained in 1974. The complaint which could only be decided by the trial Court once complaint has been fixed for hearing before the learned trial Court as to whether averments and material would attract the statute which has been enacted in 2005 and that very relates to the merits of the case and cannot adjudicate or discharge by this Court. No observation can be given that may affect the merits of the case before the trial Court as I have already observed that trial Court would have to consider the essential ingredients which include the commission of offence and culpability within ambit of Section 3 of *ibid* Act.

12. In view of above, impugned judgment is set aside while allowing this criminal revision with direction to the trial Court to register the complaint and firstly decide the essential question of applicability of said Act, 2005 as urged by learned counsel for respondents No.1 and 2 that property in question is their ancestral property since 1974 and falls outside the scope of said Act and only thereafter the learned Trial Court may decide the Complaint in accordance with law.

13. The instant Revision Application is disposed of in the above terms.

JUDGE

SAJID