

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH**  
**CIRCUIT COURT MIRPURKHAS**

Criminal Misc: Application No.S-611 of 2024

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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1. For order on office objection.
2. For hearing of main case.

28.08.2025

Mr. Ghulam Rasool Samoon, Advocate for the applicant.

Mr. Ghulam Zaheer Arain, Advocate for proposed accused  
No.1 to 3.

Mr. Shahzado Saleem, A.P.G Sindh a/w Mr. Anees-ur-Rehman Municipal Officer, Mirpurkhas, Mr. Aurangzaib Mughal Anti-encroachment Officer Municipal Corporation, Mirpurkhas and SIP Kamran Halepoto SHO PS Town,

**ORDER**

**Amjad Ali Sahito, J.-** Through this Criminal Miscellaneous Application, the applicant namely Raja Ishtiaque Ali has impugned the order dated 14.11.2024 passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Mirpurkhas in Criminal Miscellaneous Application No.1577/2024, Re-Raja Ishtiaque Ali vs. The SHO P.S Town & others, wherein the application of the applicant was dismissed. Being aggrieved from the order of court below the applicant has filed instant application.

2. Per learned counsel for the applicant, in fact the applicant intervene temporary agreement with Municipal Corporation, Mirpurkhas to establish Petrol Pump business in the name of M/S New Raja Umerkot Petroleum Service. Previously license was issued in the year 2021 and this license is valid for 10 years and obtained Rs.150,000/- in shape of challan/advance. He further contended that on 26 October 2024 the proposed accused including Municipal Commissioner allegedly forcibly occupied the petrol pump, removing CCTV cameras and other material without prior notice to the applicant. The applicant approached to the concerned SHO for registration of FIR, but refused to lodge the FIR

of the applicant as proposed accused committed cognizable offence. The trial court without considering complaint made by the complainant and dismissed his application without any cogent reasons.

3. Notices were issued to the respondents/proposed accused persons, who appeared and stated that if any order passed by this court they would comply.

4. Heard and perused the record.

5. From a careful examination of the record, it transpires that the Applicant/Complainant and the official Respondent, namely the Municipal Corporation, Mirpurkhas, had entered into a temporary agreement whereby, upon payment of the prescribed challan/license fee, the competent authority of the Municipal Corporation, Mirpurkhas, issued a license in favour of the Applicant/Complainant for a period of ten years (effective from 01.07.2022 to 30.06.2032).

6. The Complainant further asserts that, subsequent to the installation of the petrol pump, the HESCO authorities, Mirpurkhas, provided an electricity connection at the said premises, whereupon the petrol pump commenced operations in a lawful manner and the Complainant was conducting his business legally. However, the proposed accused, without any lawful justification, forcibly occupied the premises known as *New Raja Umerkot Petroleum Service*.

7. It is observed that despite the subsistence of a valid license in favour of the Complainant, the Respondents, in willful disregard of the law, acted beyond the scope of their authority and, by assuming unto themselves the roles of judge and jury, unlawfully and forcibly dispossessed the Applicant/Complainant from the said fuel station, thereby committing a blatant violation of established legal principles and due process of law. In the case of **NIAZ AHMED & others v. ALJAZ AHMED & others (PLD 2024 SC 1152)** Supreme Court has held that;

***“11.....No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart the criminal proceeding initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. Therefore, irrespective of any civil litigation that may be pending in ant court, where an offence as described in the Illegal Dispossession Act, 2005 has been committed the proceeding under the said act can be initiated as the same would be maintainable in law.”***

8. In another case of ***M. GHANI v. M. A. MULLICK & BROTHERS AND 3 OTHERS (1973 SCMR 90)***, the Apex Court has held that;

***“..... Until and unless the tenant was ejected in due process of law he had a right to be on the premises, and he could not be evicted by the Assistant Registrar. The action of the sealing of the premises and the handing over of the premise to the petitioner having been declared to be without lawful authority the consequential order for putting the premises in the possession of the tenant respondent was only logical.”***

9. In another case of ***ZULFIQAR AHMED KHAN v. STATION COMMANDER, STATION HEADQUARTERS, KARACHI and another (2010 CLC 354)***, it is held that;

***“No party can be left without any remedy and any person letting property cannot be evicted therefrom without due process of law as the Constitution of Islamic Republic of Pakistan guarantees not only rights of people in respect of properties but also for their livelihood and the facts and circumstances of this case are such which warrant interference of this Court, particularly in view of principles laid down in Waris Meah's case, reported as PLD 1957 SC (Pak) 157.”***

10 In the case of ***MUHAMMAD JAVED v. VIIIITH ADDITIONAL SESSIONS JUDGE, HYDERABAD and 2 others (2018 P Cr. L J 1522)***, it is held that;

**32. It is well settled law that no person may be evicted from a property save in accordance with the due process of the law.**

**33. There is authority to suggest that even a trespasser could not be dispossessed of land without due process of law.**

**34. It was held in the case of Raza Muhammad and others v. The State, reported as PLD 1965 (W.P.) Karachi 637, that a trespasser was entitled**

***to defend his possession even against the rightful owner of the property.”***

11. In light of the foregoing discussion and the established legal precedents, the general principle of law dictates that no individual may be dispossessed of their property without due process of law and that no person shall be evicted or deprived of possession except through lawful proceedings.

12. In the case of **M. Ghani [supra]**, the Supreme Court reaffirmed that tenants or lawful possessors of property cannot be arbitrarily removed, and any act of dispossession must strictly adhere to the due process prescribed by law. Furthermore, the fundamental **right to property**, as enshrined in the **Constitution of Pakistan**, has been safeguarded to ensure that no individual is deprived of their property without legal justification and without following the proper legal procedures.

13. The learned Sessions Judge/Ex-Officio Justice of Peace, Mirpurkhas, meticulously examined the facts of the case and rendered findings on merits. However, it is a settled legal position that under Section 22-A of the Code of Criminal Procedure, 1898 (Cr.P.C.), the jurisdiction of the Justice of Peace is limited in scope. The primary function entrusted under the said provision is confined to determining whether the facts narrated in an application disclose the commission of a cognizable offence. Upon such disclosure, the Justice of Peace is competent to issue appropriate directions for the recording of the complainant's statement under Section 154, Cr.P.C.

14. The authority conferred upon the Justice of Peace is thus of a restricted nature, intended merely to supplement and facilitate the administration of the criminal justice system. The Justice of Peace neither holds the mandate to act as an investigative agency nor as a prosecuting authority. Instead, the statutory role assigned is supervisory in character, designed to provide redress in cases where police officials unlawfully decline requests for the registration of an FIR. Should the Justice of Peace embark upon a detailed inquiry or fact-finding investigation prior to the registration of an FIR, such an

approach would, in effect, compel every aggrieved individual to first seek a preliminary determination from the Justice of Peace before an FIR could be lodged. This practice is neither envisaged by the legislature nor supported by the scheme of the Cr.P.C.

15. It is further observed that minute scrutiny of factual controversies or conduct of a fact-finding exercise does not fall within the purview of the functions entrusted to a Justice of Peace. The statutory obligation imposed upon the Justice of Peace is to ensure that the lawful rights of complainants, whose grievances have been disregarded by the police, are duly safeguarded. The Cr.P.C. distinctly classifies offences into two categories: cognizable and non-cognizable. Section 154 of the Cr.P.C. prescribes the procedure for lodging information relating to a cognizable offence with the Station House Officer (SHO), whereas Section 155(1) of the Cr.P.C. delineates the procedure applicable in respect of non-cognizable offences.

16. It is of paramount importance to note that neither the Code of Criminal Procedure nor any other prevailing law authorizes an SHO to refuse registration of an FIR, provided that the information communicated to him prima facie discloses the commission of a cognizable offence. The sole requirement of law under Section 154, Cr.P.C., is that the information conveyed must reveal such an offence so as to warrant its registration.

17. In view of the above the impugned order dated dated **14.11.2024** passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Mirpurkhas is hereby **set aside** and the instant application is **allowed** and the SHO PS Town is directed to record the statement of the applicant as per his verbatim and if any cognizable offence is made then he shall incorporate the same in book of 154 Cr.P.C. At this juncture, the learned A.P.G. pointed out that the present SHO is one of the proposed accused; therefore, he submits that another official may be directed to register the applicant's FIR. The learned counsel for the applicant further submits that the SSP, Mirpurkhas may be directed to nominate

another official to register the FIR, if a cognizable offence is made out. In view of above instant application is disposed of.

**JUDGE**

**Approved for Reporting.**

*\*Adnan Ashraf Nizamani\**