

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Misc. Application No. S- **380** of **2025**.

Applicants : Shamsuddin @ Shaman Gopang & 02 others,
through Mr. Abdul Qadir Gopang Advocate.

State : Through Mr. Sardar Ali Solangi, DPG.

Respondent No.3 : Ghulam Nabi Gopang,
through Mr. Mazhar Ali Bhutto Advocate.

Date of hearing : **18.11.2025**.

Date of Order : **18.11.2025**.

ORDER

Arbab Ali Hakro, J.- Through this application under Section 561-A, Cr.P.C., the applicants have called in question the legality and propriety of the order dated 15.10.2025, passed by the learned Additional Sessions Judge-V, Larkana, whereby Criminal Complaint No.16 of 2025 titled “Ghulam Nabi Gopang Vs. The SHO P.S. Badeh & Others,” filed under the provisions of the Illegal Dispossession Act, 2005, was brought on the regular file and process was ordered to be issued.

2. In essence, the facts relevant to the present case are that the complainant, Ghulam Nabi Gopang, instituted a complaint under Sections 3, 5, and 7 of the Illegal Dispossession Act, 2005, claiming to be the lawful owner of agricultural land bearing Survey Nos. 319 (measuring 02-15 acres) and 157 (measuring 03-13 acres), comprising a total area of 05-28 acres, situated in Deh Baburi, Tapo and Taluka Dokri, District Larkana. The complainant asserted that the record of rights stood duly mutated in his favour. It was further alleged that on 14.12.2024, at about 9:00 a.m., the accused persons, armed with deadly weapons, unlawfully entered the said land, resorted to aerial firing and forcibly dispossessed the complainant in the presence of witnesses Amir Khan and Hyder Ali.

3. The trial Court, after calling and examining reports from the Mukhtiarkar Revenue, Larkana and the SHO P.S. Badeh, proceeded to pass the impugned order dated 15.10.2025, whereby the complaint was brought on record and bailable warrants were directed to be issued against the proposed accused persons.

4. Learned counsel for the applicants contends that the trial Court failed to properly hear and consider the submissions advanced on behalf of the applicants prior to passing the impugned order. It is submitted that the complaint was brought on record without due appreciation of the objections filed, which renders the impugned order illegal and unsustainable in law. The applicants, therefore, pray for setting aside of the impugned order through the instant application.

5. Learned Deputy Prosecutor General representing the state and counsel for respondent No.3 jointly supported the impugned order, submitting that the complaint was filed prior to the civil suit and disclosed a *prima facie* case of illegal dispossession. They emphasized that the impugned order is interlocutory and does not preclude the applicants from seeking appropriate relief during trial.

6. I have heard the learned counsel for the applicants, the learned Deputy Prosecutor General and the learned counsel for the complainant/respondent No.3. I have also perused the record of the case, including the impugned order dated 15.10.2025.

7. At the very outset, it is observed that the applicants have invoked the jurisdiction of this Court under Section 561-A Cr.P.C., seeking to set aside the impugned order and to quash proceedings of I.D. Complaint filed under the Illegal Dispossession Act, 2005. However, the said order is a judicial order issued by a Court of competent jurisdiction. The appropriate remedy in such cases lies under Section 439 Cr.P.C. by way of a Criminal Revision Application. The inherent jurisdiction under Section 561-A Cr.P.C, cannot be invoked where an alternate statutory remedy exists. Accordingly, the instant Criminal Miscellaneous Application is converted into a Criminal Revision Application and is treated as such.

8. The impugned order merely brings the complaint on record and directs the issuance of bailable warrants against the proposed accused. It is an

interlocutory order passed at a preliminary stage. The applicants, as proposed accused, have already joined the proceedings and filed objections. The matter is yet to proceed to the stage of framing a charge. It is well-settled that such interim orders do not finally determine the rights of the parties and can be challenged at appropriate stages under Sections 265-K or 249-A, Cr.P.C., if warranted. Therefore, interference at this stage is premature and unwarranted.

9. It is further observed that the present application has been filed only by three of the nine proposed accused, namely, Shaman (accused No.1), Hubdar (accused No.4) and Majid Ali @ Nandho (accused No.7). The remaining six proposed accused have neither challenged the impugned order nor expressed any grievance before this Court. This selective challenge undermines the claim of collective illegality and suggests that the impugned order has attained partial finality insofar as the non-applicant accused are concerned.

10. The record reveals that the complaint under the Illegal Dispossession Act was filed on 13.05.2025, whereas the civil suit for specific performance (F.C. Suit No.52/2025) was instituted later on 18.08.2025. This sequence is material. The complainant cannot be accused of filing the criminal complaint to pre-empt civil proceedings. On the contrary, the institution of civil suit by some of the legal heirs of deceased Zulfiqar Ali appears to be a defensive measure in response to the criminal proceedings already initiated.

11. The complaint names nine proposed accused. However, objections were filed only by three of them, namely, Shaman (accused No.1), Hubdar (accused No.4), and Wajid (accused No.9). Similarly, the instant application is filed only by Shaman, Hubdar, and Majid Ali @ Nandho (accused No.7). Out of these, only Majid Ali @ Nandho is a legal heir of deceased Zulfiqar Ali, the alleged vendee in the disputed agreement to sell. The remaining applicants are not party to the agreement and have not demonstrated any independent right or title to the property.

12. The applicants have sought to invoke the doctrine of part performance under Section 53-A of the Transfer of Property Act, 1882. However, this protection is available only to a transferee who is a party to a written and enforceable contract and who has taken possession in part performance of the contract. Allegedly, the agreement to sell dated 17.08.2022 was executed between Ghulam Nabi (the complainant) and Zulfiqar Ali (the deceased). The applicants, Shaman and Hubdar, are not parties to the agreement and have not

shown any privity of contract or legal succession. The doctrine of part performance can only be used as a shield and not as a sword. It cannot be invoked by third parties to justify alleged illegal possession.

13. The trial Court, while passing the impugned order, considered the complaint, the documents annexed, and the reports submitted by the SHO P.S Badeh and the Mukhtiarkar Revenue. The SHO's report noted that the applicants are in possession, while the Mukhtiarkar's report confirmed the mutation in favour of the complainant. Upon *prima facie* satisfaction, the trial Court brought the complaint on record and issued bailable warrants. This aligns with the mandate of Section 4 of the Illegal Dispossession Act, 2005, which empowers the Sessions Court to take cognizance of a complaint and proceed accordingly.

14. The applicants' apprehension that they are being falsely implicated can be addressed during the trial. They have the right to seek discharge under Section 265-K, Cr.P.C. They may also lead evidence to rebut the complainant's case. The impugned order does not preclude them from availing these remedies. It merely initiates the process and does not determine guilt.

15. In view of the foregoing, I find no illegality, irregularity, or jurisdictional error in the impugned order dated 15.10.2025 passed by the learned Additional Sessions Judge-V, Larkana. The complaint was filed within the framework of the law, prior to the civil suit, and discloses a *prima facie* case. The applicants have already joined the proceedings and have ample opportunity to defend themselves. Accordingly, the instant Criminal Revision Application (converted from Criminal Miscellaneous Application) is **dismissed**. The impugned order is upheld. The trial Court shall proceed with the complaint in accordance with the law, uninfluenced by any observations made herein, which are confined to the limited scope of the present application.

JUDGE