

THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD.

Cri. Rev.Appln: No. S-282 of 2017.

1. For orders on office objection
2. For katcha peshi.

Date of hearing: 05.6.2018

Date of Judgment: 08.6.2018

Mr. Waqar Ahmed Memon, advocate for applicant
Ms. Safa Hisbani, APG.
Syed Madad Ali shah, advocate Amis-Curie.

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant criminal revision application are that the applicant filed a direct complaint before learned trial court under the provisions of illegal Dispossession Act 2005, when it becomes ripe for evidence the applicant filed an application for recording of his evidence through his attorney. It was dismissed by learned trial court, such order of dismissal of his application, the applicant has impugned before this Court, by way of instant criminal revision application.

2. It is contended by the learned counsel for the applicant that the applicant being old and infirm is incapable to understand the proceedings of the courts as such is not in position to record his evidence in person and learned trial court has failed to consider such aspect of the case, without any justification. By doing so, according to him, learned trial court has committed wrong which could be made right by this court, by allowing the applicant to record his evidence through his attorney. In support of his contention he relied upon case of **Amanullah Khan vs. the State** which is reported at **2011 P.Cr.L.J Page-774** and case of **Abdul Hafeez vs. Usman Farooqui through**

his daughter Sharmila Farooqui and another, which is reported at **2008 PSC (Cri.) 959**.

3. Learned APG and learned counsel for the private respondents have sought for dismissal of the instant criminal revision application by contending that it has been filed by the applicant only to delay and defeat the trial of his complaint before learned trial court.

4. Learned Amicus-Curie was fair enough to state that there is no provision in general or special law which may authorize courts for recording evidence of the witness / complainant through attorney, in criminal cases.

5. I have considered the above arguments and perused the record.

6. The applicant has sought for recording of his evidence through his attorney under the pretext that he being old and infirm is incapable to understand the proceedings of the court. If it is so, then how he becomes capable to file his direct complaint before learned trial court and thereafter instant criminal revision application before this Court in person? Such exercise on the part of the applicant, prima facie indicate that he is not an infirm or incapable person to understand the court proceedings. Be that as it may be, there is no provision in general or special law which may authorize the courts to record the evidence of the witness / complainant through attorney, in criminal cases. Things which are not permitted by law could not be permitted to be done under any pretext. If permitted to be done then those would be unlawful. In these circumstances learned trial court was right to dismiss the application of the applicant for recording his evidence through his attorney.

7. The case law which is relied upon by the learned counsel for the applicant is on distinguishable facts and circumstances as such it hardly support the case of the applicant. In case of **Amanullah Khan** (supra) it was held that there is no embargo for any person to lodge a complaint. In the instant matter no issue of lodgment of complaint is involved. In case of **Abdul Hafeez** (supra) direct complaint filed by daughter acting as attorney of her father without producing power of attorney was treated to have been filed by her. In the instant matter no issue of filing of direct complaint is involved. Issue involved is that of recording of evidence of the applicant through his attorney.

8. In view of the facts and reasons discussed above, it could be concluded safely that impugned order is not calling for any interference by this Court, by way of instant criminal revision application, it is dismissed accordingly.

9. Needless to state that the valuable assistance, rendered by learned Amicus Curiae is appreciated.

J U D G E