

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.12 of 2018

Present: **Mr. Justice Nazar Akbar**

Applicant : Mst. Shazia Zafar, through
Mr. Muhammad Ayub Chandio, advocate.

Versus

Respondent No.1 : Rafiq s/o Shaikh Muhammad Ilyas,
Respondent No.2 : Rasheed s/o Shaikh Muhammad Ilyas,
Through Mr. Yasin Khan Azad, advocate.

Respondent No.3 : Station House Officer, P.S Gulberg,

Respondent No.4 : The State,
Through Ms. Rahat Ahsan, Addl. P.G.

Date of Hearing : **11.01.2019**

Date of Decision : **21.01.2019**

J U D G M E N T

NAZAR AKBAR, J.- Appellant Mst. Shazia Zafar has preferred this Criminal Revision Application against the order dated **21.12.2017** delivered by learned VIth Additional District and Sessions Judge, Central Karachi, whereby Criminal Complaint No.23/2017 filed by the applicant/complainant under Sections 3, 4, 7 and 8 of the Illegal Dispossession Act, 2005 was dismissed.

2. To be very precise, the facts of the case are that husband of applicant was absolute and lawful owner of house No.BS-07, Block-13, FB Area, Karachi (the said property) and Respondent No.1, being her brother-in-law was residing at 2nd Floor of the said property. It is case of the applicant/complainant that on **25.4.2017** applicant/complainant went to Hyderabad and on **27.04.2017** when she came back and while she entered into her floor, Respondents No.1 and 2 kicked her out and also extended threats for dire consequences for

which she had reported the matter to Respondent No.3/SHO for legal action but no action was taken and then applicant/ complainant sent a legal notice to Respondents No.1 and 2 through courier service. It was further averred that Respondents No.1 and 2 are in illegal possession of the said property. Therefore, the applicant filed Criminal Complaint before the trial Court.

3. The police has submitted investigation report before the trial Court. The learned trial Court after hearing learned counsel for parties dismissed the said Criminal Complainant by order dated **21.12.2017**. The said order is impugned herein this Criminal Revision Application.

4. On **11.01.2019** after hearing learned counsel for the parties, they were directed to file written arguments, which they filed on **12.01.2019**. I have perused the record and written arguments submitted by the learned counsel for the parties.

5. Learned counsel for the applicant contended that the applicant after contracting her second marriage with the deceased Shaikh Muhammad Zafar used to reside at the said property and after the death of her husband, Respondents No.1 and 2 dispossessed her without due process of law and the police has submitted false report. He has vehemently contended that the applicant had also filed a petition of harassment against the Respondents when she was under threat from them. The said petition was disposed of with direction to the Petitioner to approach police and the applicant did approach the police and even Justice of Peace when she was not allowed to enter the house. After failing both the forums, she filed complaint under Illegal Dispossession Act, 2005.

6. Learned counsel for Respondents No.1 and 2 contended that the applicant is not the owner of the said property. In fact Mrs. Shaikh Fareeda, Mrs. Hameeda Iqbal and Mst. Haneefa Khatoon are the lawful owners of the said property by virtue of registered gift deed dated **28.11.2013**. He further contended that the applicant has also filed **suit No.2007/2015** before this Court for administration of moveable and immovable properties of her deceased husband in which the preliminary decree was passed and subsequently the parties have filed compromise application and the applicant was paid her share amounting to **Rs.73,46,207/-** towards her share in the estate of the deceased. He further contended that the issues between the parties are relating to the suit No.2007/2015, therefore, no case for illegal dispossession is made out by the applicant.

7. I have perused the impugned order in which the learned trial Court has observed as under:-

Close perusal of the contents of complaint and police investigation report reveals that the complainant was residing at the given address in the year 2006 and her husband died in the year 2014 thereafter she residing at house in question about one year and then she vacated the house and residing with her mother since then. Police report further reveals that the property in question belonged to Mst. Shaikh Fareeda and her sister and in this effect police collected registered gift deed.

In view of the above, stated position particularly in view of the police report, it appears that the complainant had never been dispossessed by the respondents and she is not an owner of the property in question, therefore, no case is made out for taking cognizance. Accordingly the complaint stands dismissed being merit-less.

The case of applicant before the trial Court was that she has not been allowed to enter into the house where she was living before going to her mother. Before that she has also filed a suit in respect of the

distribution of the properties left by her deceased husband Shaikh Muhammad Zafar and in the said suit she has included the property from which she has been allegedly dispossessed when she was out of Karachi. In her suit for administration she has not sought any injunction against the Respondents about her possession of the portion of the subject property. Even otherwise, if possession of the suit property was regulated by Court in suit which was filed in **2015**, then remedy is contempt of Court or an application under **Section 144 CPC** and not complaint under Section 3, 4 and 7 of the Illegal Dispossession Act, 2005. The contentions of applicant that she has earlier filed a harassment petition to seek declaration that she is in possession of suit property is misconceived. This Court has not accepted her prayer about the suit property and her petition was dismissed with directions to her. But she did not follow the order of this Court and after her failure to obtain favourable order from the Justice of Peace, she did not challenge it. In the given facts of the case in hand the case-law relied upon by the learned counsel for the applicant is not applicable.

8. In view of the above facts, the learned trial Court has rightly passed the impugned order and the same does not require interference by this Court. This Criminal Revision Application is dismissed alongwith pending application(s).

JUDGE

Karachi

Dated: 21.01.2019

Ayaz Gul