

IN THE HIGH COURT OF SINDH AT KARACHI

**Criminal Revision Application No.82 of 2014**

Present: **Mr. Justice Nazar Akbar**

Applicant : Mr. Shahid Hussain Malik. (In person).

**Versus**

Respondent No.1 : Ghulam Ali, son of Gohar Khan.

Respondent No.2 : Javed Iqbal, son of Ghulam Ali.

Respondent No.3 : The State,  
Through Ms. Rubina Qadir, D.P.G.

Date of Hearing : **12.02.2019**

Date of Decision : **12.02.2019**

**J U D G M E N T**

**NAZAR AKBAR, J.-** Appellant Shahid Hussain Malik has preferred this Criminal Revision Application against the order dated **11.02.2014** delivered by learned Ist Additional Sessions Judge, East Karachi, on application under Sections 265-K Cr.P.C filed by respondents No.1 and 2 in criminal complaint No.110 of 2009 filed by the applicant/complainant under Section 3 of the Illegal Dispossession Act, 2005, whereby the said application was allowed and respondents No.1 and 2/accused were acquitted.

2. To be very precise, the facts of the case are that the applicant/complainant is owner of a House constructed on Plot No.L 245, Gulistan-e-Malir, District East, Karachi (the Said Property). He purchased the said property from House Building Finance Corporation (HBFC) on **30.03.2005** in public auction. The HBFC has also issued a certificate No.HBFCL/REC/ZOK/2009/290 dated **30.06.2009** in confirmation of sale in the name of the applicant/complainant. On **17.01.2009** the applicant visited the

said property and found that respondents No.1 and 2/accused have trespassed/encroached and the said property was in damaged and deteriorated condition. Therefore, the applicant requested respondents No.1 and 2/accused to vacate the said property and they agreed to vacate the same within two months but despite repeated requests made by the applicant/complainant, they failed to vacate the same, therefore, the applicant/complainant made complaint against respondents No.1 and 2 in writing to SHO, Al-Falah, Malir Karachi but his FIR was not lodged by the SHO, thereafter he filed complaint to the T.P.O, against the said SHO and subsequently on **10.10.2009** the FIR was registered by the said SHO against both the accused. Thereafter on **24.09.2009** the applicant/accused filed Criminal Petition under **Section 3 of Illegal Dispossession Act, 2005** to obtain physical possession of the said property from respondents No.1 and 2/accused. Respondents No.1 and 2/accused filed application under Section 265-K Cr.P.C in the said criminal petition which was allowed by the learned trial Court and respondents No.1 and 2 were acquitted.

3. Applicant present in person contended that the impugned is based on misreading and misinterpretation of law, facts, material and documentary evidence place on record. He further contended that the impugned order amounts misuse of power under Section 265-K Cr.P.C. and the same is void and passed without lawful authority, therefore, the same may be set aside.

4. Conversely, learned DPG has supported the impugned order and contended that the trial Court has rightly passed the impugned order acquitting respondents No.1 and 2/accused.

5. I have considered the arguments advanced by the applicant/complainant and learned DPG for the State. From perusal of pleadings of the applicant/complainant it revealed that the applicant also filed civil suits regarding the same property and a judgment has been passed against respondents No.1 and 2/accused in respect of the same property. In this context the trial Court in the impugned order has also observed as follows:-

*Since in the civil proceedings at the appellate stage one judgment has been passed against the present accused in respect of the same property involved in the instant petition, hence in my view an accused cannot be punished for an offence through different courses of law.*

*The said circumstances made the case of the complainant highly doubtful and the benefit of doubts always goes in favour of the accused. Accordingly I invoke the power of section 265-K Cr.P.C and acquit the applicants/accused persons namely Ghulam Ali and Javed Iqbal. They are on bail, their bail bonds stand cancelled and sureties discharged.*

Perusal of above order clearly indicates that the applicant/accused has filed civil proceedings against respondents/accused in respect of the same property, therefore, the trial Court has rightly observed that the accused cannot be punished through different course of law.

6. In view of the above facts and circumstances, the learned trial Court has rightly passed the impugned order and the same does not require interference by this Court. Consequently, this Criminal Revision Application was dismissed by short order dated **12.02.2019** by short order and these are the reasons for the same.

JUDGE

Karachi

Dated: 29.03.2019

Ayaz Gul