

# IN THE HIGH COURT OF SINDH AT KARACHI

## **Criminal Revision Application No.127 of 2017**

Present: **Mr. Justice Nazar Akbar**

Applicant : Shaikh Muhammad Naseem, through  
Mr. Muhammad Rafi Kamboh, advocate.

### **Versus**

Respondent No.1 : Mst. Farida Gul,  
through Mr. Abdullah Munshi, advocate.

Respondent No.2 : The State  
Ms. Rubina Qadir, A.P.G.

Date of Hearing : **30.04.2019**

Date of Decision : **20.05.2019**

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

**NAZAR AKBAR, J.-** Appellant Shaikh Muhammad Naseem has preferred this Criminal Revision Application against the order dated **23.02.2017** delivered by learned IVth Additional Sessions Judge, East Karachi, whereby private Complaint No.130/2010 filed by the applicant/complainant under Sections 3, 4, 6, 7 and 8 of the Illegal Dispossession Act, 2005 was dismissed.

2. To be very precise, the facts of the case are that the appellant/complainant on **28.10.2010** has filed complaint under Sections 3, 4, 6, 7 and 8 of the Illegal Dispossession Act, 2005 against Respondent No.1 stating therein that he has acquired House No.37-C, Tipu Sultan Road, Mohammad Ali Cooperative Housing Society, Karachi (the said premises) on rent from deceased Mst. Hajra Begum who was original landlady of the said premises in the year 1981 against monthly rent of Rs.4000/- per month. It was further averred that the said premises was comprised with two portions and the major portion

was rented to the applicant/complainant whereas Mst. Hajra was residing in small portion. The applicant/complainant on the basis of gift deed between the landlady, Agha Khalid Ahmed on **17.04.1989** entered into fresh tenancy agreement with the said Agha Khalid at monthly rent of Rs.6000/-. The applicant/ complainant was regularly paying monthly rent without delay but Respondent No.1/accused started harassing him and his family by issuing threats of dire consequences, therefore, the applicant/ complainant filed **suit No.710/2006** before the concerned Court. It was further averred that on **08.01.2010** Respondent No.1/accused through her hired elements, broke open the lock of the said premises and took forcible possession of the said premises. She also removed the goods of the applicant/complainant worth Rs.30,71000/-, therefore, the applicant/complainant approached SHO, P.S Bahadurabad, Karachi for lodging complaint against Respondent No.1/ accused and others but the SHO failed to lodge the FIR and subsequently on the direction of Court FIR No.140/2010 under **Section 448/506/504** PPC dated **7.5.2010** was registered.

3. However, despite above FIR on **28.10.2010**, the applicant filed Criminal Complaint before the trial Court. After receiving enquiry report U/S 5 of the Illegal Dispossession Act, 2005 the trial Court by order dated **13.12.2010** had dismissed the criminal complaint of applicant/ complainant. Against the said order, the applicant/complainant preferred Criminal Revision Application No.07/2011 before this Court which was also dismissed by order dated **30.09.2011** and order of the trial Court was maintained. The applicant/ complainant preferred Criminal Petition for Leave to Appeal No.04-K/2012 before Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated **22.7.2016** remanded the case to the

trial Court for fresh decision on merit. The learned trial Court on remand after hearing learned counsel for parties again dismissed the said Illegal Dispossession Complainant by order dated **23.02.2017**. The said order is impugned herein this Criminal Revision Application.

4. I have heard learned counsel for the parties and perused the record.

5. The only contentions raised by the learned counsel for the applicant is that after the remand of the case from the Hon'ble Supreme Court it was duty of the trial Court to record evidence of the parties and since it was not done therefore, the case was not decided on merits. He contended that everything has also been examined by the Hon'ble Supreme Court and therefore, the impugned order in a way, is violation of the judgment of the Supreme Court whereby the case was remanded. Learned counsel for the respondent has contended that the Supreme Court has not passed any specific direction in its remand order to the learned trial Court except that it be disposed of on merits. He has referred to the judgment of Hon'ble Supreme Court and contended that the case has been remanded only on the ground that in the previous findings of this Court the criminal complaint was dismissed in limine as not maintainable in view of the pendency of the civil litigation between the parties. He has vehemently contended that the Supreme Court has held that civil liabilities have to be recoded under civil laws and criminal liabilities such as under Illegal Dispossession Act, 2005 are independent to each other and therefore, without touching the merit of criminal complaint, the order of its dismissal on the ground that civil litigation was pending was not legal.

6. I have also gone through the record and the impugned order. The learned trial Court has thoroughly examined earlier dismissal of the complaint by order dated **13.12.2010** and remand order of the Hon'ble Supreme Court dated **22.7.2016**. The learned trial Court has examined the complaint and all the documents filed alongwith complaint. The record shows that the respondent has filed a very comprehensive counter affidavit of more than 1000 pages showing complete litigation between appellant and the respondent Farida Gul. The appellant has not filed any affidavit in rejoinder to dispute the factual assertion in the counter affidavit. The only interest of the appellant is that at one point of time he was tenant in the premises in which litigation was going on between the respondent and her in-laws and he himself was a proforma party in the said litigation since he had entered into an agreement of tenancy with one of the defendant. It has also come on record that during the litigation he has vacated the premises on having acquired / purchased his own property in the same Defence area of Karachi. However, somehow, or the other he contended that he has been illegally dispossessed by the landlady. Be that as it may, in support of his claim he was initially required to prove that he has been dispossessed by use of force or other means. The record which has been fully examined by the trial Court, which is judicial in nature, has belied the story of the applicant that he has been illegally dispossessed. No rejoinder has been filed by the appellant to deny and dispute the documents which have confirmed the fact that the complainant has vacated the premises voluntarily. The applicant has not disputed the order of Hon'ble High Court of Sindh dated **10.1.2010** whereby Nazir was appointed to inspect the premises and submit his report **with regard to the alleged incident of dispossession**. Nazir's fee of Rs.5000/- was borne by the

complainant and at the time of inspection his counsel Agha Javed Pathan, was present. The inspection took place on **14.1.2010** at 4:00 p.m. Then there was another inspection report dated **12.3.2010** in which in para-4 Nazir again reported that "*S. M. Naseem is not residing in the above stated bungalow. Nothing of his articles/goods were there. Except on roof top broken dressing tables and tin box etc, which he claimed and were lying.*" The learned trial Court has also examined the report under **Section 5** called from the SHO, wherein it has been categorically stated that the complainant on **7.5.2010** has lodged a criminal case bearing crime No.140/2010 under Section **448/506/504** of the PPC at P.S Bahadurabad against the accused/respondent and during investigation he has failed to prove the accusations and therefore, by order of Judicial Magistrate, East, Karachi dated **27.8.2010** the FIR was disposed of as 'C' class due to lack of evidence. The appellant has not challenged the decision of the Judicial Magistrate on the said FIR.

7. It may be mentioned that beside the aforesaid FIR No.140/2010, the appellant in addition to the instant criminal complaint under Illegal Dispossession Act, 2005, has also filed a direct complaint under **Section 200** of the Cr.P.C on **11.11.2010** with the following prayer;-

- a) Investigate the case at its own.
- b) Register case, under **sections 380/451/457** of Pakistan Penal Code or any other special enactment as the case may be, against the above named respondent as well as the other culprits, who will come on record as result of investigation conducted by this Hon'ble.
- c) Punish the culprits to the fullest extent the law.
- d) Recover the stolen/removed articles and hand over the same to the above named applicant/accused.

e) To grant any other / further relief(s), which this Hon'ble Court may deem just and proper in the circumstances of the case.

The said private **complaint No.407/2010** was quashed by this Court on **30.9.2011** and the Hon'ble Supreme Court in Appeal 3-K/2012 vide judgment dated **12.11.2013** has been pleased to set aside the judgment of this Court and the proceeding of the said private **complaint No.407/2011** were restored to the stage before the trial court at which the same has been quashed. Learned counsel for the applicant when questioned that what is the stage of the said private complaint, he says the said private complaint is still pending. However, he added, probably the court file is missing. On further query he informed that he has not made any complaint about missing of file of private Complaint No.407/2011 from the trial Court. He concedes that it has not been disposed of till date. The pending direct complaint is admittedly on the allegation of **House trespass** and (S.451/457 PPC) and theft (S.380 PPC) as may be observed from the prayer clause reproduced above. Till date the complainant has not produced his evidence in his own direct complaint No.407/2011.

8. The learned trial Court in view of the above facts and circumstances while dismissing the criminal complaint has relied on cases reported as **(i) Mst. Gulshan Bibi and others ..Vs.. Muhammad Sadiq and others (PLD 2016 SC 769), (ii) Muhammad Akram and n9 others ..Vs.. Muhammad Yousuf and another (2009 SCMR 1066) and (iii) Mumtaz Hussain ..Vs.. Dr. Nasir Khan and others (2010 SCMR 1254)**. Learned counsel for the applicant has not even referred to the case law to distinguish the same to reverse the impugned order. The criminal Court has inherit power to quash/dismiss prosecution if the Court on basis of facts presented before it comes to

the conclusion that the accused cannot be convicted. In the given facts of the case as discussed above, the respondent who is a woman, beside civil litigation which has been decided in her favour upto Supreme Court level, has already been acquitted of charges of house trespass (Section 442 PPC) since FIR No.140/2010 against her by the same complainant has been declared "C" class. There is no likelihood of her conviction under section 3 & 4 of the Illegal Dispossession Act, 2005 on the same accusation which were not proved in investigation by police. When the facts on the face of the record are so glaring that the respondent / woman has not used any physical force or otherwise dispossessed the applicant, the contention of learned counsel that without recording evidence the case cannot be decided on merit by the trial Court is misconceived. The desire of applicant to record evidence against the respondent on so-called charge of house trespass and theft can still be fulfilled if he wish to pursue his third similar case viz; Direct Complaint No.407/2011 which is still pending against the respondent.

10. 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, therefore, instant Criminal Revision Application is dismissed with no order as to costs.

JUDGE

Karachi  
Dated:20.05.2019

Ayaz Gul  
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