

**JUDGMENT SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
*Criminal Rev. Application No.S-113 of 2015*

Date of hearing: 08.04.2021

Applicant: Muhammad Bilal through Mr. Tariq G. Hanif Mangi Advocate.

Respondents 3-1(a & c) and 4: Through Mr. Alam Sher Bozdar, Advocate

Respondents 3-1(b,d,e): Through Khuda Dino Sangi Advocate, who under took to file vakalatnama on their behalf

The State: Through Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General

**ORDER**

**KHADIM HUSSAIN TUNIO, J-** Through captioned criminal revision application, the applicant has called in question the order impugned herein, dated 22.10.2015, passed by learned Additional Sessions Judge (Hudood) Sukkur in Direct Complaint No. 03/2015 (*Re- Muhammad Bilal v. SHO PS B-Section Sukkur and others*) whereby the learned Judge dismissed the complaint filed by the applicant u/s 3 & 4 of Illegal Dispossession Act 2005.

2. Facts, in brief, of the present criminal revision application are that the complainant/applicant is the lawful owner of the commercial-cum-residential property bearing CS No.B-3178 admeasuring 47-00 sq. yards situated at Dakhan Street Shahi Bazar Sukkur, which is a three story residential house. On 28.11.2014 at about 5.00 p.m the SHO PS B-Section Sukkur along with accused 3, 4, and 5 and two unidentified persons came at the subject property and forcibly dispossessed the applicant from its first floor and also deprived the applicant from the house hold articles as detailed in the memo of complaint and cash Rs.75000/- as well as involved the applicant in a Crime No.177/2014 of PS B-Section Sukkur and arrested

him. After his release on bail on 11.12.2014 his wife and witnesses informed him that on 11.12.2014 accused persons dispossessed his family members from the second floor of the aforesaid property and also took away the household articles and cash Rs.300,000/- as detailed in the memo of complaint and they have also installed an iron gate at the main entrance of the property. The applicant along with witnesses time and again approached the accused for return of articles and handing over the possession of the subject property to him but they refused, hence he filed direct complaint under Illegal Dispossession Act, which was dismissed by learned Additional Sessions Judge (H) Sukkur through impugned order by observing that cognizance of offence cannot be taken in this complaint as no offence is made out under this act.

3. Learned Counsel for the applicant has contended that the learned trial Court has failed to consider the material aspects of the case while passing the impugned order; that the learned trial court instead of believing the prima facie case of the complainant, adopted short cut methods as there is settled principle of law that every matter should be decided on its merits rather than its technicalities; that the learned trial court has not appreciated the material produced by complainant nor discussed the report of Mukhtiarkar (Revenue) Sukkur and SHO PS 'B' Section Sukkur in proper manner though both the reports are contradictory with each other; that the complainant was in possession of property in dispute and private respondents have forcibly dispossessed him as neither they are owners of the property nor they have any title documents of the said property and learned trial court has wrongly shifted the burden on the complainant regarding title of disputed property; that the learned trial court has passed the impugned order without applying its judicial mind in very hastily manner and arbitrary and has not given proper reasons for dismissing the Direct Complaint. He therefore prays that the impugned order be set aside.

4. Learned counsel for the respondents supported the impugned order arguing that the learned trial Court has passed a speaking order and impugned order does not suffer from any illegality or infirmity.

5. Learned A.P.G also supported the impugned order and has urged that there is no illegality in the impugned order and therefore the same may be maintained in its letter and spirit.

6. I have heard the learned counsel for the applicant, counsel for respondents and learned A.P.G and have perused the record available before me.

7. Learned trial Court, in its order has observed that police report did not mention any case/record of property grabbing by respondents/accused and no antecedents of Qabza mafia is also presented by police against proposed accused. It is by now a well settled principle of law that a criminal complaint is maintainable if the point of *Qabza Mafia* or *habitual land grabbers* isn't established as it is not necessary that the complainant, who files the complaint, to firstly prove that the accused belong to a *Qabza Mafia*. In this respect, I am fortified by the dictum laid down by the Honourable Supreme Court in the case of *Mst. Gulshan Bibi & Others V. Muhammad Sadiq & Others (PLD 2016 Supreme Court 769)* wherein it has been observed as follows:-

“Section 3(1) of the said Act by using the terms 'anyone' and 'whoever' for the offenders clearly warns all persons from committing the offence described therein and when found guilty by the court are to be punished without attaching any condition whatsoever as to the maintainability of the complaint. So all that the Court has to see is whether the accused nominated in the complaint has entered into or upon the property in dispute in order to dispossess, grab, control, or occupy it without any lawful authority. Nothing else is required to be established by the complainant as no precondition has been attached under any provision of the said Act which conveys the command of the legislature that only such accused would be prosecuted who holds the

credentials and antecedents of 'land grabbers' or 'Qabza Group'.

(emphasis supplied)

8. Learned trial court in its order also observed that a FC Suit No.178/2013 is pending adjudication before the learned 1<sup>st</sup> Senior Civil Judge Sukkur regarding same property which is under discussion in present complaint. In this regard I am of the view that the presence of a civil litigation does not, in any way, bar the proceedings under criminal law and the same can run concurrently for the same. In this respect, reliance is placed on the case law reported as *Shaikh Muhammad Naseem v. Mst. Farida Gul (2016 SCMR 1931)*, wherein it has been held that:-

'5. In the impugned judgment it was also held that where civil litigation with regard to illegal dispossession from immoveable property is pending between the parties, the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained. This finding is also based on the decision of the Lahore High Court in Zahoor Ahmed's case (PLD 2007 Lahore 231, reasoning of which was adopted by three member bench of this Court in Bashir Ahmed's case (PLD 2010 SC 661). We are of the view that such a finding is also not sustainable in law. Any act which entails civil liability under civil law as well as criminal penalty under criminal law, such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent of each other. Once the offence reported in the complaint stands proved against the accused within the confines of the provisions of the Illegal Dispossession Act, 2005 then he cannot escape punishment on the ground that some civil litigation on the same issue is pending adjudication between the parties. No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart the criminal proceedings initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. Therefore, irrespective of any civil litigation that may be pending in any Court, where an offence, as described in the *Illegal Dispossession Act, 2005*, has been committed, the proceedings under the said

Act can be initiated as the same would be maintainable in law.'

(emphasis supplied)

9. In view of the above discussion and circumstances, I am of the considered opinion that the learned trial Court has erroneously come to the conclusion that no offence under Illegal Dispossession Act was made out. Consequently, revision application was allowed, the impugned order was set-aside and the matter was remanded back to the trial Court for deciding afresh in accordance with law within three months, after providing opportunity of adducing evidence to the parties. Parties were directed to appear before the trial court on 22.04.2021 without claiming further intimation notice. Vide shot order 08.04.2021, these are the reasons for the same.

**J U D G E**

Suleman Khan/PA