

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Revision Application No. S-50 of 2016

Applicant: Jagdesh Kumar through Mr. Gulshan R. Dayo,
advocate

Respondent(s): Gul Mohammad & others through Mr. Khadim
Hussain Khoso, advocate.

The State: Through Mr. Sharafuddin Kaanhar, A.P.G.

Date of hearing: 09.11.2018

Date of decision: 05.01.2019

ORDER

KHADIM HUSSAIN TUNIO, J- Through captioned Criminal Revision Application filed u/s 435/439 Cr.P.C, applicant Jagdesh Kumar has assailed order dated 25.08.2016 passed by learned Additional Sessions Judge Shahdadkot in 2nd Criminal Complaint No. 26 of 2016 u/s 3 and 4 read with Section 7 of Illegal Dispossession Act 2005, whereby learned Court below dismissed the complaint.

2. Precisely, facts leading to the filing of the Cr. Complaint initially are that the complainant's brothers namely Ramesh Lal & Satya Pal purchased multiple properties *i.e. City Survey Nos. 933 (area of 24-5 Sq. Yards), 934 (area of 33-2 Sq. Yards) and 935 (area of 73-3 Sq. Yards) of Ward A Shahdadkot*. Record of rights/extract from Property Card Register had been mutated in their names. The complainant's brothers took over the possession of the purchased property on 20.01.2016 and constructed upon the same a residential house, 7 shops and one underground floor and remained in peaceful possession without any objections. The property had been handed over to the complainant for security purposes as his brothers resided outside the city. On the eventful day *i.e. 29.04.2016*, the complainant was present along with several witnesses when the alleged accused came there while being duly armed with deadly weapons and dispossessed the complainant and the tenants of 4 of the shops and illegally occupied the residential house along with the underground area while the possession of the 3 shops remained with complainant. Even though the complainant disclosed, in presence of witnesses, that his

brothers were the legal owners of the said property the accused hardly paid him any attention and after being annoyed issued him threats. The complainant approached the accused and *Nek Mards* of the area but he was kept on false hopes and when left with no alternative, filed the Cr. Complaint u/s 3/4 read with 7 of the Illegal Dispossession Act 2005.

3. After hearing the parties and perusing the record, learned Additional Sessions Judge Shahdadkot, vide impugned order, dismissed the Criminal Complaint No. 26 of 2016, therefore present applicant filed this Revision Application.

4. Learned counsel for the applicant submits that the impugned order is contrary to both law and facts hence the same is not maintainable and is liable to be set aside; that the complainant was not examined during trial nor any statement of the complainant was recorded; that the trial Court has not appreciated the reports of concerned SHO P.S A Section Shahdadkot (*Respondent No. 13*) and City Surveyor Shahdadkot (*Respondent No. 14*); that the dismissal of the criminal complaint is not based upon satisfactory evidence; that the complainant was in physical possession of the property and was forcibly dispossessed by the accused; that the report of Respondent No. 14 clearly shows that the record of rights is mutated in favour of the complainant party; that the learned trial Court erred to appreciate the report of Respondent No. 13 which clearly shows that the property of complainant party was forcibly occupied by the accused; that per present circumstances, Respondents Nos. 1 to 12 have no legal right or title over the subject property; that it is well settled by now that the cases should be decided on merits and not over technicalities; that the learned trial Court failed to appreciate that the evidence produced by the applicant was sufficient to proceed in accordance with law; that the impugned order is a result of misreading and non-reading of material available before the Court; that the learned trial Court has not considered the merits of the case at all; that the learned trial Court dismissed the complaint without any valid and justifiable reasoning, therefore he prays that the impugned order may be set aside.

5. On the other hand, learned counsel for respondents has averred that the dispute between the parties is of a civil nature; that the complainant's evidence was not recorded at all; that the complaint was not

maintainable as the applicant is not the owner of the said property; that the respondents are co-sharers with the applicant's brothers; that the complaint filed through attorney is not maintainable. He therefore supported the impugned judgment and in support of his contentions, he has relied on case law reported as **PLD 2009 Karachi 350, 2016 MLD 1238, PLD 2010 SC 661 & 2010 SCMR 1254**.

6. Learned A.P.G, while supporting the impugned order argued in the same line as argued by the learned counsel for Respondents.

7. I have heard the learned counsel for the applicant, counsel for respondents and learned A.P.G and have perused the record with their assistance.

8. Before entering into the merits of the case, it would be relevant to firstly refer to the case of **Habibullah v. Abdul Manan (2012 SCMR 1533)**, wherein the Hon'ble Apex Court dealt with a similar case and observed in terms of land-grabbers that:-

"In view of the above case-law referred above, it is established that the said law is applicable only to those accused persons who have the credentials or antecedents of Qabza Group and are involved in illegal activities and belong to the gang of land grabbers or land mafia".

In the present case, there is nothing on record that would suggest that the respondents belong to any *Qabza Group* or have been involved in any such illegal activities. Mere assertions on the respondents in such terms cannot justify such status.

9. Not only this, it is an undisputed fact that the present case is of civil in nature as the respondents claim to be co-sharers of the property. It pertains that by filing the criminal complaint regarding illegal dispossession, the complainant has tried to transform a civil dispute between the parties into a criminal case just to pressurize the parties and attract the provisions of criminal law so as to burden the respondents. In this respect, reliance is placed on the case law referred to by the learned counsel for respondents reported as **PLD 2010 SC 661**.

10. Now, I would like to divert my attention to the argument advanced by learned counsel for the respondents that the complaint was not

maintainable as it was filed through attorney, I would again refer to the case law cited by learned counsel for respondents *i.e.* **2016 MLD 1238**, wherein it has been held that a complaint can be filed by anyone but an attorney. This Court, in the above case observed that:-

“14. Now let's examine whether an attorney can act as a complainant or a witness in criminal matters or otherwise? The term 'attorney', legally, in most general sense draws a picture of one who is not speaking for himself but for his 'principal'. As per Black's Law Dictionary (fourth addition) the term 'attorney' is defined as:--

'In the most general sense this term denotes an agent or substitute or one who is appointed and authorized to act in the place of or stead another'

Per Marriam- Webster, it is defined as:

'one who is legally appointed to transact business on another's behalf'

Since the 'Criminal administration of justice' recognizes only those as a witness or complainant who either have seen; heard or least perceived any fact towards the offence hence an 'attorney' , being not speaking of his own knowledge, would not fall within meaning of 'witness/complainant'. Thus, an attorney cannot legally, under such status of attorney, file the FIR or a criminal complaint.

15. Accordingly, I am of the clear view that the plea regarding competency of attorney to file direct complaint is having weight and thus anybody can bring the law into motion but not as an 'attorney'.

16 In view of above, instant application is dismissed.”

11. In the peculiar facts and circumstances, the instant Criminal Revision Application is dismissed and the impugned order is maintained as no illegality or infirmity was committed by the learned Court below.

12. Before parting with this order however, it is made clear that if either of the parties chooses to take this matter into the civil Courts, the observations made hereinabove shall not prejudice the case of either party as the same are tentative in nature.

J U D G E