

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Rev. A. No.S- 117 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection.
2. For hearing of main case.
3. For hearing of M.A-8382 of 2021 (Stay application).

04.03.2022

Mian Taj Muhammad Keerio, Advocate for the applicant/accused.

Mr. Haji Khan Hingorjo Advocate for respondent No.1/complainant.

Ms. Rameshan Oad, A.P.G.

ORDER

Muhammad Saleem Jessar, J.-Through this criminal revision application, applicant Muhammad Khan has assailed the order dated 12.07.2021, passed by the learned Additional Sessions Judge, Khipro/trial Court in I.D.C No.01 of 2020 (re: Saroop Singh V Muhammad Khan and others), whereby the application under section 7 of Illegal Dispossession Act, 2005, filed by complainant/respondent No.1 was allowed and possession of the subject property was restored to him through Mukhtiarkar Khipro and the mashirnama to that effect was also prepared by him dated 26.07.2021.

2. The facts and particulars of the case are already mentioned/available in the memo of instant revision application as well as the impugned order, hence, need not to be reproduced/repeated here again.

3. Learned counsel for the applicant submits that impugned order is not sustainable as he assailed it before this Court on 19.07.2021 where restraining order was passed on 02.08.2021; besides, the disputed land is mutated in their favour hence submits that impugned order may be set aside and the criminal revision application filed by the applicant/accused may be allowed. In support of his contention he places reliance upon the cases of **Atta Rasool and**

3 others V Haji Muhammad Rafique and 2 others (2019 PCr.LJ 1023), **Malik Muhammad Akhtar V Additional Sessions Judge and others** (2016 MLD 1018) **Abdul Haq and others V Additional Sessions Judge and others** (2007 PCr.LJ 1299) and **Mst. Naseem Aziz V The State and 7 others** (2016 PCr.LJ 786). Learned counsel has also focused upon the concluding para of the impugned order.

4. On the other hand, learned counsel for respondent No.1 submits that after announcement of the impugned order dated 12.07.2021 and in compliance thereof the Mukhtiarkar Revenue Khipro put the complainant/respondents in possession of the suit land on 26.07.2021 and mashirnama to such effect was also prepared, therefore, the impugned order has been acted upon and the instant criminal revision application has become infructuous, hence submits that same may be dismissed. He next submits that after framing of the charge evidence of prosecution witness(es) has been recorded before the trial Court and now the case is about to conclusion. He further rebuts the contentions advanced by learned counsel for the applicant that disputed land is mutated in their favour and refers the report furnished by Mukhtiarkar Revenue Khipro (available at page-31 of the Court file) dated 22.04.2020. He next submits that being highly influential person of the area applicant/accused after passing restraining orders by this Court had again dispossessed the complainant/respondent No.1 from the disputed land, which too is an offence, therefore, the applicant has repeated the offence and is not entitled for the relief sought for.

5. Learned A.P.G also opposes the criminal revision application and supports the impugned order and submits that no illegality or irregularity has surfaced on the impugned order which may warrants interference by this Court.

6. Heard arguments, perused record.

7. It will be appropriate to reproduce the concluding para of the impugned order dated 12.07.2021 as well as relevant paras of the report furnished by the Mukhtiarkar Taluka Khipro dated 22.04.2020, which reads as under:-

IMPUGNED ORDER DATED 12.07.2021.

“Upshot of the above discussion is that there exists prima facie illegal occupation of the accused over the land in question according to section 7 of this act during trial if court is satisfied that a person is found prima facie to be not in lawful possession the court shall as interim relief direct him to put the owner or occupier as the case may be consequently on tentative assessment of the record I am of the considered opinion that accused are not prima facie in lawful possession of property, therefore, I direct the accused to put the complainant in possession of property in question forthwith as an interim relief and in failure Mukhtiarkar Revenue Khipro and SDPO Khipro are directed to do needful to carryout order into effect to get possession of property as directed above in question report of compliance. However, the observations made hereinabove are tentative in nature and shall not affect the final merits of the case.”

REPORT OF MUKHTIAKRAR DATED 22.04.2020

“ It is further submitted that a statement has been recorded by Tapedar of the beat, of two persons (1) Ali Khan S/o Bachal having CNIC No.4420217605731 and (2) Pirtam s/o Mir Khan having CNIC No.4420204384055. They have stated in their statement that they are haris of Khatedar Saroop Singh Thakur since long time. Two months ago, they cultivated watermelon fruit. At present, Muhammad Khan Rajar and people are in possession of Survey No.234, 238 Deh Pharhadi, Taluka Khipro.

In this regard, the concerned Supervising Tapedar of Circle Khipro has also reported that as per entry No.303 dated 29.10.2009 of V.F VII-B of Deh Pharhadi, Taluka Khipro, Survey No.234 (area 01-14 acres), 238 (area 03-36 acres) stand entered in the name of Amar Singh s/o Aidan Singh. Furthermore, as per entry No.023 dated 19.05.2015 of V.F VII-B (New), the aforementioned Survey Numbers stands entered in the name of Saroop Singh s/o Ganji Singh, on the basis of Registered document through (Attorney).

The report of Supervising Tapedar Circle Khipro, the report of Tapedar of the beat, the statement and photo stat copies of relevant Record of Rights are enclosed herewith for kind perusal.”

8. It is an admitted position on record that after pronouncement of the impugned order possession of the land in dispute was handed over/restored to the complainant/respondent No.1 by Mukhtiarkar Revenue Khipro and to that effect mashirnama dated 26.07.2021 was also handed down in presence of

mashirs. It may also be noted that Mukhtiarkar Revenue Khipro has also issued writ of possession through P.S SHO Khipro and upon basis of such writ of possession, possession of the disputed land was restored to complainant/respondent No.1; however, after getting restraining orders at belated stage viz on 02.08.2021, the applicant again dispossessed the respondent No.1 from said land so he had repeated the offence and being a highly influential person of the area even he had no respect for the Court's orders as possession of disputed land was restored to respondent No.1 through said Court's order. Moreover, as submitted by both learned counsel, evidence of complainant has been recorded before the trial Court and remaining witnesses are to be examined very soon.

9. Apparently the impugned order has been acted upon; however, the applicant/accused had again dispossessed the respondent No.1/complainant from disputed land, therefore, propriety of law demands that respondent No.1/complainant should again be put under safe and vacant possession of the disputed land as was done by the Mukhtiarkar Khipro on 26.07.2021; hence, keeping live this criminal revision application upon the board of this Court will not serve any purpose. Accordingly, the criminal revision application being devoid of merits is hereby dismissed along with listed application (M.A-8382 of 2021) with costs of Rs.10,000/- (Rupees ten thousand) to be deposited in the account of dispensary of this Court within a period of one week. Consequently, interim order dated 02.08.2021 is hereby recalled. Resultantly, the impugned order dated 12.07.2021, passed by learned Additional Sessions Judge, Khipro in I.D.C No.01 of 2021 is hereby maintained. **As a consequence thereof, since the impugned order had already been acted upon, therefore, the Mukhtiarkar concerned as well as SDPO Khipro are directed to ensure compliance of the said order within a period of three days under intimation to trial Court as well as to this Court through Additional Registrar.**

10. Admittedly, the trial Court allowed the application filed by respondent No.1/complainant under section 7 of the Act vide its order dated 12.07.2021 and in compliance of said order, Mukhtiarkar and SDPO Khipro had issued writ of possession dated 23.07.2021 and upon the basis of said writ of possession vide memo/mashirnama dated 26.07.2021, respondent No.1 was put into vacant/safe possession of the disputed land and such report was also submitted by them before the trial Court. It was under the complete knowledge and conscious of the applicant and his counsel even then they both have suppressed the said facts from the Court and by playing fraud got restraining order dated 02.08.2021, which shows that applicant had no respect for the Court order(s) nor he is a gentleman. The repetition of offence at the hands of applicant also shows that he is a criminal minded person having no respect for the law as well as the Courts; therefore, under the garb of restraining order dated 02.08.2021 passed by this Court, had again dispossessed the respondent/complainant from suit land, which tantamounts to an offence and cannot be recognized/permitted to by any prudent mind.

11. The case law relied upon by learned counsel for the applicant has no relevancy with instant case as facts and circumstances of this case are quite distinguishable from the facts and circumstances of the cases relied upon by learned counsel.

12. A copy of the order be communicated to the trial Court/Mukhtiarkar Revenue/SDPO Khipro through Sessions Judge, Sanghar/Deputy Commissioner/Senior Superintendent of Police concerned over fax today for information/compliance as well as its report.

JUDGE