

**ORDER SHEET**

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Criminal Revision Application No.S-113 of 2022

Criminal Revision Application No.S-129 of 2022

Criminal Revision Application No.S-133 of 2022

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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Date of hearing : 24.11.2022.

Date of order : 24.11.2022.

Applicants: Dr. Bahadur Khan : Through M/s Ishrat Ali Lohar  
Dahri, Raees Mithal Khan Dahri and Hameedullah Dahri,  
and Sardar Khan Muhammad Advocates.  
Dahri,

The State : Mr. Abdul Waheed Bijarani,  
Additional Prosecutor General,  
Sindh for State.

Respondent Ali Bux : Through M/s Muhammad  
Hashim Leghari and Roshan Ali  
Azeem Mallah, Advocates.

**ORDER**

***Muhammad Saleem Jessar, J.-*** By this common order, I propose to dispose of all the three Criminal Revision Applications bearing No.113, 129 and 133 of 2022 filed by the applicants as facts and circumstances of all the three Criminal Revision Applications are inter connected and arise out of same incident.

2. The Criminal Revision Application No.S-113 of 2022 filed by applicant Dr. Bahadur Khan Dahri and 02 others v. Ali Bux and another has been directed against the order dated 16.08.2022 passed by 2<sup>nd</sup> Additional Sessions Judge, Shaheed Benazirabad whereby he after considering the statement of respondent / complainant as well statements of the witnesses recorded by Magistrate u/s 202 Cr.P.C brought on record the Complaint and issued BWs against the applicants in terms of his order dated 16.08.2022 which was instituted as Direct Complaint No.06/2022

vide Sessions Case No.514/2022 (Re-Ali Bux v. Raees Mithal and others).

3. In Criminal Revision Application No.S-129 and 133 of 2022, the applicants Sardar Khan Muhammad and Raees Mithal have challenged the order dated 17.09.2022, whereby the trial Court dismissed their applications filed u/s 265-K Cr.P.C. Since common question of law as well facts are involved therefore, all these applications are hereby decided accordingly.

4. Facts of the Direct Complaint filed by respondent / complainant before the trial Court are that the dispute over plot / piece of land bearing Revenue Survey No.434/2, admeasuring 01-14 acres, situated in Daulatpur, District Shaheed Benazirabad was going on between the parties, due to which Muhammad Hassan Mallah and others had filed F.C. Suit No.41/2017, Re-Muhammad Hassan v. Province of Sindh and others, for seeking declaration, cancellation and injunction before the Court of learned 2<sup>nd</sup> Senior Civil Judge, Nawabshah against the applicant / accused No.01, and others. The respondent / complainant has been acting as Special Attorney on behalf of the plaintiffs. The said suit was decreed by the Court of 2<sup>nd</sup> Senior Civil Judge, Nawabshah vide judgment and decree dated 11.08.2021. The respondent / complainant party was declared owner and in possession of the suit land. Per judgment and decree the revenue authorities were directed to cancel the mutation entry in favour of accused No.1 being result of fraud and misrepresentation. By said judgment and decree applicant / accused No.1 was directed not to interfere with title and possession of the plaintiff / complainant over the subject land. The applicants / accused being defendants in that civil suit had filed Civil Appeal No.52/2021 before the District Judge, who had assigned it to learned 4<sup>th</sup> Additional District Judge, Shaheed Benazirabad where it is still pending adjudication.

5. M/s Ishrat Ali Lohar and Hameedullah Dahri, Advocates for applicants argued that applicants are Zamindars of area besides one of them is Member Provincial Assembly Sindh and other one is also a former Member Provincial Assembly Sindh (MPAs) and the respondent / complainant is a notorious criminal of the area

therefore, the respondent / complainant in order to cause damage to their honour as well dignity of the applicants had filed Direct Complaint against them which has wrongly been admitted and brought on record by the trial Court therefore, impugned orders suffer from many infirmities and are not tenable under the eye of law. Learned counsels further stated that it is quite impossible for the applicants who being notables of the area, had committed the offence of robbery and thereby had encroached upon the alleged piece of land belonging to respondent / complainant. They further averred that respondent / complainant is not an ostensible owner of the plot in dispute rather he is an attorney of the actual owners therefore, was not competent to file Direct Complaint against the applicants. They further argued that there is no probability of the applicants to be convicted for any offence hence by granting these revision applications the impugned orders may be set aside and thereby proceedings initiated against them being arisen out of Direct Complaint No.06 of 2022 may also be quashed. In support of their contentions, learned counsels have placed reliance upon the cases reported as Maqbool Rehman v. The State and others (2002 SCMR 1076), Zafar and others v. Umer Hayat and others (2010 SCMR 1816), Muhammad Hayat v. Rafiq and 5 others (2017 P.Cr.L.J 219), Mst. Naheed v. Ameer Bakhsh and 5 others (2016 YLR 975), Abdul Razzaq Lashari and 3 others v. Government of Sindh through Chief Secretary and 3 others (2015 YLR 1082), Yasmin Gul Khanani and another v. Tariq Mehmood and 2 others (2013 YLR 2716), Ghulam Mujtaba v. The State (2009 YLR 169), Mst. Naheed v. Ameer Bakhsh and 5 others (2016 YLR 975), Roshan Ali v. Amir Bux and another (PLD 2002 Karachi 115) and an unreported order dated 06.10.2022 passed by this Court in Criminal Revision Application No.S-77 of 2022, taken on record. Learned counsels for the applicants have also annexed certain documents under the cover of their statement dated 24.11.2022, same have also been taken on record.

6. On the other hand, M/s Muhammad Hashim Leghari and Roshan Ali Azeem Mallah, Advocates for respondent / complainant opposed instant Criminal Revision Applications and stated that the trial Court had passed a speaking order thereby has rightly rejected

their applications u/s 265-K Cr.P.C besides had rightly brought on record the complaint filed by respondent / complainant. They further submitted that in fact the respondent had filed Criminal Miscellaneous Application in terms of Section 22-A (6) (i) Cr.P.C before the Ex-Officio of Justice of Peace which was disposed of in terms of order dated 15.04.2022 leaving the respondent at liberty to file Direct Complaint u/s 200 Cr.P.C which the respondent filed and subsequently it was brought on record vide Sessions Case No.514/2022. As far as contention raised by learned counsels for the applicants that they were sitting as well former MPAs of the area, therefore had committed no offence, learned counsels for the respondent have specifically argued that they being highly influential persons of the area have illegally dispossessed the respondent from the valuable piece of plot / land as they intended either to grab or purchase it on nominal rates. They further submitted that applicants being influential persons have also got implicated the respondent under narcotic case so that he may not pursue these cases and may meet with unjustified demands of the applicants. They further submitted that it is settled principle of law that fate of criminal case may not be decided at preliminary stage unless evidence is recorded. In support of their contentions, they have placed reliance upon the cases of Saleemullah Khan v. The State (2016 YLR 1344), Ayesha S. Sheikh v. VIII-Additional District and Sessions Judge, Karachi (South) (2021 MLD 100) and Mir Shakil ur Rehman v. Messrs Creek Developers (Private) Limited and another (PLD 2019 Sindh 670) and an unreported order dated 17.11.2022 passed by this Court in Criminal Revision Application No.S-218/2022 (Re-Syed Bachal Shah Lakyari and another v. Mumtaz Ali and others).

7. Mr. Abdul Waheed Bijarani, learned Assistant Prosecutor General, Sindh, appearing for State also opposed the revision applications and submitted that Direct Complaint filed by the respondent was rightly admitted and subsequently the trial Court had also taken cognizance of the offence therefore, it will be appropriate for the applicants to proceed with the trial instead of pressing these criminal revision applications. In support of his contention, learned A.P.G placed reliance upon the case of Shabana

Khan Advocate v. Major (Retd.) Jehanzeb Aslam and 2 others (2022 MLD 1109).

8. Heard. Record perused.

9. Admittedly, there is dispute between the parties over piece of land besides the applicants had allegedly committed the offence / robbery for which the witnesses who were examined by the Magistrate during preliminary enquiry have fully supported the version of respondent / complainant thereby it was admitted and brought on record vide Direct Complaint No.06 of 2022 therefore, once the Complaint was brought on record the best course for the applicants would be to proceed with the trial instead of filing interlocutory applications seeking premature acquittal. Hence the impugned order dated 16.08.2022 passed by trial Court / 2<sup>nd</sup> Additional Sessions Judge, Judge Shaheed Benazirabad in Criminal Revision Application No.S-133 of 2022 does not suffer from any illegality or infirmity. Consequently, it is hereby maintained. Moreover, the dispute over plot / piece of land bearing Revenue Survey No.434/2, admeasuring 01-14 acres, situated in Daulatpur, District Shaheed Benazirabad is the bonafide property of Muhammad Hassan and others on whose behalf the respondent / complainant had been acting as their attorney and filed F.C Suit No.41 of 2017 (Re-Muhammad Hassan v. Province of Sindh and others) seeking declaration, cancellation and injunction before the Court of 2<sup>nd</sup> Senior Civil Judge, Nawabshah against the applicants. The said suit was decreed in favour of the plaintiffs vide judgment and decree dated 11.08.2021 thereby the entry allegedly kept in the name of applicants was also directed to be cancelled. The applicants were also directed by the trial Court in the civil suit not to disturb or cause any interference in the title and possession of the respondent / complainant. It further appears that learned Civil Court while decreeing the suit filed by respondent / complainant had specifically directed the applicants who had appeared as defendants not to disturb the peaceful possession of the land of respondent / complainant even then they had dispossessed him by committing the offence which shows the applicants had no respect for the Court orders. Such conduct on the part of applicants prove

that they can indulge themselves in any criminal activity hence the contention raised by learned counsels for the applicants that they being notables of the area cannot commit such an offence carries no weight. The contention raised by learned counsels for the applicants that civil litigation is pending adjudication therefore, criminal complaint cannot be maintained is concerned, it is settled law that there is no legal bar for maintaining civil as well criminal proceedings together as both proceedings can run side by side. No doubt there is no bar to file application u/s 265-K Cr.P.C at any stage of the trial even before framing of charge yet Section 265-K Cr.P.C is not meant for the complaint case more particularly when the trial Court had taken cognizance and matter before it (trial Court) is at the verge of trial hence once the trial has commenced the best course for the applicants is to lead evidence instead of seeking premature acquittal. Learned counsel for the respondents have also referred to an unreported order passed by this Court in Criminal Revision Application No.S-218/2022 (Re-Syed Bachal Shah Lakyari and another v. Mumtaz Ali and others) vide order dated 17.11.2022.

11. Bare reading of Section 265-K Cr.P.C, it appears that an application u/s 265-K Cr.P.C can be pressed at any stage of trial even before framing of the charge. However, in instant case the Direct Complaint was filed by respondent / complainant which after his examination u/s 200 Cr.P.C was sent to the Judicial Magistrate for preliminary inquiry. The respondent / complainant had produced his witnesses before the Judicial Magistrate who also recorded their statements u/s 202 Cr.P.C. After recording statements of complainant as well witnesses, learned Magistrate had recommended to the effect a prima facie case in terms of complaint was made out therefore, the learned 2<sup>nd</sup> Additional Sessions Judge, Shaheed Benazirabad (trial Court) admitted the complaint and thereby instituted it vide Sessions Case No.514 of 2022 therefore, learned trial Court took cognizance of offence and issued bailable warrants against the applicants / accused who upon service of the same had surrendered before the trial Court. After furnishing their required surety, the applicants / accused

instead of proceeding with trial had moved application u/s 265-K Cr.P.C and sought their premature acquittal.

12. In case of The STATE through Advocate-General, Sindh High Court of Karachi v. Raja ABDUL REHMAN (2005 SCMR 1544), the Hon'ble Supreme Court of Pakistan while deciding identical issue has laid down in Para-13 of the judgment as under:-

“13.....It is, however, to be noted that though there is no bar for an accused person to file application under section 249-A, Cr.P.C. at any stage of the proceedings of the case yet the facts and circumstances of the prosecution case will have to be kept in mind and considered in deciding the viability or feasibility of filing an application at any particular stage. The special or peculiar facts and circumstances of a prosecution case may not warrant filing of an application at a stage when the entire prosecution evidence had been recorded and the case was fixed for recording of statement of the accused under section 342, Cr.P.C. This Court in the cases of Bashir Ahmad v. Zafar ul Islam PLD 2004 SC 298 and Muhammad Sharif v. The State and another PLD 1999 SC 1063 (supra) did not approve decision of criminal cases on an application under section 249-A, Cr.P.C. or such allied or similar provisions of law, namely, section 265-K, Cr.P.C. and observed that usually a criminal case should be allowed to be disposed of on merits after recording of the prosecution evidence, statement of the accused under section 342, Cr.P.C., recording of statement of accused under section 340(2), Cr.P.C. if so desired by the accused persons and hearing the arguments of the counsel of the parties and that the provisions of section 249-A, section 265-K and section 561-A of the Cr.P.C should not normally be pressed into action for decision of fate of a criminal case.”

13. In case of SEEMA FAREED and others v. the STATE and another (2008 SCMR 839), the Hon'ble Supreme Court has also laid down as under:-

*“4.....It is well-settled that, a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law*

*both the proceedings can co-exist and proceed with simultaneously without any legal restriction.”*

14. Since it is a complaint case and after recording statements of the complainant as well witnesses was brought on record therefore, the statements of complainant and his witnesses recorded by a Judicial Magistrate cannot be overlooked on any flimsy ground or on the basis of any technicality rather it should be responded to / threshed out by way of evidence hence when the complaint was brought on record through judicial process, an application u/s 265-K Cr.P.C cannot be maintained. Per statements of PWs a serious allegation has been leveled against the applicants therefore, best course for the applicants was to proceed with the trial instead of pressing application u/s 265-K Cr.P.C. It is settled principle of law that once a cognizance has been taken by the trial Court in a complaint case which was brought on record after due process of law, it should not be dismissed summarily u/s 249-A and 265-K as well 561-A Cr.P.C without recording evidence. It is pertinent to mention that the constitution of the land is supreme law and under the esteemed constitution nowhere it is mentioned that a criminal person against whom criminal cases are registered is not competent to file complaint or get the case registered against injustice or wrong done with him. Therefore, the contention raised by learned counsels for the applicants to the effect that respondent / complainant is a notorious criminal of the area and cannot file a complaint against notables, carries no weight. Mere argument that the applicants are notables of the area cannot commit or indulge in such a criminal activity is no ground for their premature acquittal more particularly when they have been assigned specific role which is yet to be determined by the trial Court after recording some evidence.

15. The upshot of the above reasons and discussion is that the impugned orders dated 16.08.2022 and 17.09.2022 passed by the trial Court are well reasoned and no illegality or material irregularity has been committed by the trial Court, which may warrant interference by this Court. Consequently, all three captioned Criminal Revision Applications are hereby dismissed alongwith pending applications, if any. The interim order passed on



26.09.2021 in Criminal Revision Application No.S-129 of 2022 stands recalled. However, learned trial Court is directed to conclude the trial within a period of two (02) months' time under intimation to this Court.

Office to place copy of order in all connected files.

JUDGE

Tufail