

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Rev. Appln: No.S-43 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For hearing of main case

18.09.2023

Mr. Abdul Hameed Jamali advocate for applicant.

Mr. Imran Ahmed Abbasi, A.P.G along with Muhammad Ali Jamali Mukhtiarkar, Daur and ASI Ali Akbar PS Bandhi.

Mr. Aamir Iqbal Memon Advocate for respondents No. 4 to 7.

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ZULFIQAR ALI SANGI, J:- Through this revision application, applicant has challenged the order dated 21.02.2019, wherein learned trial Court has dismissed the Complaint under section 3&4 of Illegal Dispossession Act, 2005 being not maintainable on the ground that first direct complaint was dismissed for non-prosecution and no appeal or revision has been preferred against such order.

Learned counsel for applicant contends that since the direct complaint was not decided on merits and it was dismissed for non-prosecution, therefore, such order was not challenged and fresh complaint was preferred.

On the other hand, learned counsel for private respondents No.4 to 7 supported the impugned order and in this regard reliance is placed on the case of ALEEMUDDIN vs. BALBAN HAMEED & 2 others (2018 YLR 41).

Learned A.P.G for the State has conceded that in such circumstances fresh complaint was maintainable.

In view of case law reported as AZMAT BIBI and another vs. ASIFA RIAZ & 3 others [PLD 2002 Supreme Court 687], wherein the Hon'ble Supreme Court decided the same issue with an observation that in such circumstances where the complaint was dismissed for non-prosecution, a fresh complaint was maintainable. In the case in hand, the earlier complaint was not decided on merits and no any observation of the Court or on the record as to the acquittal of the accused persons.

In view of aforesaid judgment of the Supreme Court, this criminal revision application is allowed; impugned order dated 21.02.2019 is hereby set aside and the direct complaint in question is deemed to be pending before the trial Court, the trial Court is directed to decide it on merits.

JUDGE