

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Rev. App. No. S – 47 of 2021

(*Sikandar Ali Machi versus The State & others*)

Date of hearing : 30.04.2024

Date of decision : 30.04.2024

Mr. Prem Kumar alias Parmanand, Advocate for applicant.

Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

## ORDER

**Muhammad Iqbal Kalhoro, J.** – Respondent No.2, although served, has chosen to remain absent. Process server is present and submits that respondents No.3 to 6 are his sons, who had assured him to appear today in the Court.

2. I have heard learned Counsel for the applicant and learned Deputy Prosecutor General. Applicant had filed a direct complaint u/s 3(2) of Illegal Dispossession Act, 2005, against respondents for dispossessing him from his land admeasuring 00-06 acres, Survey No.135, Deh Lakhan on 03.10.2018. The direct complaint, after preliminary enquiry, was admitted and brought on a regular file and notice was issued to respondents, who joined the same.

3. Learned trial court at one point in time appointed one advocate namely Ali Raza Kalwar as a commissioner to visit the site and find out the truth behind allegations. It appears that he filed a report purportedly against the applicant stating mainly that respondents were in occupation of the subject land since long. On the basis of such report, learned trial court proceeded to dismiss the complaint and discharged the respondents.

4. Learned counsel has stated that the course adopted by the trial court is alien to law and is not sustainable in that after the complaint is admitted and brought on regular file, the trial court either can acquit the accused u/s 265-K CrPC or after a full-dressed trial on merits. There is no provision in the CrPC or in the subject law allowing the trial court to appoint some commissioner to visit the site and on his report dismiss the direct complaint without recording evidence and sorting out the controversial points disputed by the parties.

5. His arguments have not been rebutted by learned Deputy Prosecutor General, who has proposed that since the impugned order is not sustainable in law, he does not support the same.

6. Consequently, on the grounds taken in defense, as reproduced above, this revision application is **allowed**. The impugned order is **set aside**, and the matter is **remanded** back to the trial court to proceed with the matter on merits expeditiously, after due notice to the respondents.

Criminal revision application is accordingly **disposed of** along with pending application(s) if any.

J U D G E

Abdul Basit