

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

Cr. I.D. Appeal No.S-183 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case

13.11.2024

Barrister Jawad Ahmed Qureshi Advocate for Appellants.  
Mr. Irfan Ali Talpur APG.

This Appeal is directed against the Order made by the 3<sup>rd</sup> Additional Sessions Judge, Shaheed Benazirabad on 20.10.2020 so as to summarily dismiss I.D. Complaint No.92/2020 filed by the Appellants, alleging their illegal dispossession from land admeasuring 25/30 ghuntas out of a larger parcel of 03-06 acres in Survey No.333 Deh Wado Kundah, Taluka Kazi Ahmed, District Shaheed Benazirabad.

Learned Counsel submits that the Order has been made without proper application of mind and without properly considering the underlying facts and circumstances, especially the Mukhtiarkar's Report dated 03.01.2020, which shows the appellants to be the owners of the land of 03.06 acres in Survey No.333 and also confirms that no entry in the disputed area exists in the name of the Respondents/proposed accused, with it also being observed through the site visit that some area of the Complainant was under a boundary wall which had been constructed by said Respondents/accused. He submits that in the wake of such material, the matter ought to have been allowed to proceed to trial and decided after leading evidence. He has placed reliance on the judgments reported in the cases of ***DAIM ALI KHAN Versus MUSHTAQUE ALI alias FAROOQ and 4 others (2017 YLR 1456)*** and ***Hafiz ABDUL GHAFFAR Versus NADEEM and 4 others (2022 P Cr. L J Note 54)***. He further submits that the learned Trial Court erred in deciding the matter on the basis of the representation forthcoming from the side of proposed accused who had entered appearance

through Counsel prior to any notice being issued to them. He submits that it is only when the Court has determined that the matter constitutes a fit case for cognizance and issuing notice that the proposed accused would have locus standi to appear and contest the matter. He has placed reliance on a Judgment of a learned Single Judge of this Court in the case of **SHARMILA FAROOQUI Versus THE STATE (2009 MLD 850)**, the operative part of which reads as follows:

*"I have given my anxious consideration to the arguments advanced by the learned counsel for the respective parties and have gone through the record, particularly the Enquiry Report. I am of the firmed view that the proposed accused have no locus standi in a criminal complaint unless the Trial Court takes cognizance of the case. In such view I am fortified by the judgment of the Hon'ble apex Court reported in PLD 2002 SC 687 (Supra), whereby the Hon'ble Supreme Court was of the view that the person complained against has no right of participation until cognizance of the matter is taken. As such the issuance of notice to the accused by the learned Trial Court was out of boundaries settled in, a complaint case. As far as the issue of the applicant being an authorized person on behalf of her father to file a complaint is concerned, suffice it to say, that it is a settled principle of law as laid down in PLD 1962 Karachi 326 (supra), that "Every member of the public has a right to set the law in motion by complaint, whether he is himself a witness of the facts which prima facie constitute an offence or not as such there is no embargo for any person to file a complaint."*

The arguments appear well founded and in view thereof, the learned APG did not support the impugned Order and conceded that the matter constituted a fit case for remand so as to be proceeded on merits.

Despite the Respondents having entered appearance in the present matter through Counsel, representation on their behalf was found wanting on subsequent dates, with a note of caution also being recorded on the previous dates that in the event of continued absence the matter would to be decided on the basis of the record and such assistance as was forthcoming.

Under the circumstances, in view of the foregoing, the instant Appeal stands allowed with the impugned Order being set aside and the matter remanded to the Trial Court for decisions afresh on merits.

JUDGE