

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Criminal Misc. Appeal No. S-33 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

20.02.2020

1. For orders on M.A. No. 713/2020 (U/A)
2. For orders on office objections "A"
3. For orders on M.A. No. 714/2020 (E/A)
4. For hearing of main case

Mr. Hakim Ali D. Khan Chandio, Advocate for the applicant.

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1. Urgency Application is allowed.
2. Office objections are deferred.
3. Exemption Application is allowed subject to all just exceptions.
4. This criminal miscellaneous appeal under section 561-A, Cr. P.C. is directed against the order, dated 23.12.2020, whereby the learned Special Judge Anti-Corruption (Prov.) Larkana dismissed the Direct Complaint filed by the appellant under section 200, Cr. P.C. after recording statement of appellant under section 200, Cr. P.C. and his witnesses under section 202 (*ibid*) in preliminary enquiry.

Learned counsel for the appellant contents that the land in S. Nos. 279, 182, 294, 295, 306, 324, 327, 334, 341, 349, 356, 357, 358, 359, 500 and 657, situated in Deh Kathia Bazar, Taluka Nasirabad was originally belonged to one Mitho Mal, which was subsequently, vide Entry No. 141 dated 17.10.1928, transferred to his son Haso Mal, who sold out the same to Muhammad Alam, the grandfather of appellant, and Allah Bukhsh Phulpoto in equal share of 0-8 Anna, vide Entry No. 246, dated 25.12.1932.

He further contents that in the decade of 90s accused Riaz Ahmed, who was then posted as Additional Deputy Commissioner, Larkana inserted bogus Entry No 98 showing the land on the name of his father Ali Muhammad. Besides, said accused fabricated Entry No, 270, date 07.11.1981, whereby *Fotikhata* was affected in favour of legal heirs of said Ali Muhammad. He also contents that in the year 2003, the grandfather of appellant moved an application to Deputy District Officer (Revenue) Warrah, who after scrutinizing the record and hearing the parties passed an order, dated 26.06.2003, whereby he declared the said entries as bogus, managed and fabricated; hence, the proposed accused were liable to be prosecuted in accordance with law, and for their prosecution the direct complaint was filed by the appellant which was dismissed by the trial Court vide impugned order, which is being contrary to law liable to be set aside by this Court. He maintains that approaching to civil court for the protection of civil rights and to criminal court for taking cognizance against the wrong doer are two separate and distinct remedies under the law, which can be availed by the aggrieved person simultaneously, which legal aspect of the case has been disregarded by the learned trial Court while passing impugned Order.

I have heard the learned counsel for the appellant and perused the material available on record.

It reflects from the perusal of impugned order that the learned trial while dismissing the complaint has observed that as per statement of complainant the D.D.O (Revenue), Warrah ordered for keeping the note on

the alleged entries of being suspicious and; thereafter, the complainant

neither challenged the same before revenue authority nor filed any civil suit before any competent court of law, and filed the direct complaint after 16 years. The trial Court has further observed that it is not the function of it to adjudicate upon the title of the property or give any finding in regard to the authenticity of document and that the dispute between the parties is over the private landed property, for which civil court is competent to resolve the controversy in between the parties.

It may be seen that the alleged entries have yet not been declared by any competent forum as forged, fabricated and bogus by fixing criminal liability on the proposed accused, who as per assertion of the appellant held their respective revenue posts/offices at the relevant period. The D.D.O (Revenue), Warrah only found the alleged entries as "suspicious", vide order dated 26.06.2003. The validity and legality of the alleged entries and controversial issues with regard to the title of the subject land fall within the exclusive domain of revenue authority and/or, as the case may be, competent civil Court; however, admittedly neither the grandfather of the complainant nor any of his successors, including appellant initiated any proceedings either in revenue or civil hierarchy. It may also be observed that for the registration of a case/complainant under the Prevention of Corruption Act, 1947, the complainant is required to make out *prima facie* that the proposed accused being public servants have committed criminal misconduct as envisaged under section 5 (*ibid*), which ingredient is also missing in the instant case; hence, there appears no sufficient ground for the proceeding against the proposed accused.

For the foregoing facts and reasons, I am of the view that the learned counsel for the appellant on merit has failed to point out any illegality, perversity or nullity in the impugned order calling upon interfering by this Court; therefore, there appears no reason for this Court to interfere into the impugned order, which seems to be a legal order passed in accordance with law, and as such this criminal miscellaneous appeal being devoid of merit is dismissed, accordingly in limine.



JUDGE