

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Rev. Application No.145/2014

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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Applicant	:	Javaid Iqbal @ Khalid Mahmood Through Mr. Muhammad Tamaz Khan, advocate.
Respondent No.1	:	The State, through Mr. Abdullah Rajput, A.P.G.
Respondent No.2	:	Muhammad Ismail
Respondent No.3	:	Mst. Amina
Respondent No.4	:	Mst. Khajida
Respondent No.5	:	Mst. Haleema
Respondent No.6	:	Mst. Sakeena
Respondent No.7	:	Sajid Ismail
Respondent No.8	:	Mahboob Through Mr. Muhammad Mustafa Sandhu, advocate.
Date of hearing	:	24.4.2015

JUDGMENT

Nazar Akbar, J.- This Criminal Revision is directed against the order dated 14.02.2014 passed by IIIrd Additional District & Session Judge, Central Karachi whereby petitioner's direct complaint No.56/2014 under Section 3, 4, 7 & 8 of Illegal Dispossession Act, 2005 (Act of 2005) against the Respondents No.2, 7, 8, and 5/6 unknown persons was dismissed, though the applicant was unlawfully dispossessed from the shop situated on ground floor of Plot No.85/5 Chota Maidan, Nazimabad, Karachi (demised shop) by sheer misuse of force.

2. Brief facts as narrated in the criminal complaint under the Act of 2005 before learned trial Court were that the petitioner who is tenant in the demised shop since 2000 and had a dispute with Respondent No.2, 7 & 8 who are legal heirs of deceased owner of the demised shop was forcibly and unlawfully dispossessed by the respondents. In para-9 of complaint, it was specifically stated that on **13.1.2014** at about 4:00 pm when the complainant, his father, uncle and one friend were present on the shop, Respondents No.2, 7, 8 alongwith 5 / 6 unknown person came

at the demised shop duly armed and forcibly kicked out the complainant and others after beating them with kicks and fists and extended threat of killing if the complainant again came at the shop. The trial Court registered the complaint as **Cr. Complaint No.56/2014** and issued notices to the concerned SHO under **Section 5** of the Act of 2005 to investigate and report. On **1.2.2014** the SHO concerned submitted a report alongwith statement of witnesses Muhammad Yousuf, Fateh Muhammad, Mohammad Nasir Khan confirming the contents of the complaint that the petitioner was running a business by the name and style of Golden Nagori Milk shop since 2000 in the demised shop and the respondents on **13.1.2014** forcibly dispossessed the petitioner and locked the shop. The SHO on **31.1.2014** had also recorded statement of Respondent No.2 Muhammad Ismail who admitted that on **13.1.2014** he has forcibly put lock on the demised shop and claimed that there are certain utility dues of gas and electricity which has not been paid by the petitioner. Other witnesses, Muhammad Imran and Muhammad Yousuf also confirmed that there was a dispute between Respondent No.2 and the petitioner on account of non-payment of utility bills of the demised shop by the petitioner and that respondent No.2 has put his locks on the shop in question.

3. However, the trial Court not only ignored police report filed by the SHO in terms of **Section 5** of the Act of 2005 but also completely failed to follow the dictum laid down by the Hon'ble Supreme Court in the case law reported in **2010 SCMR 1254** (Mumtaz Hussain -Vs- Dr. Nasir Khan and others) which was relied upon by the petitioner and dismissed the complaint without even going for a formal trial. The only ground for dismissal of the direct complaint was that after going through the provision of **Section 3** of the Act of 2005 the trial court opined that the respondents did not fall within the definition (of offenders) given in the said provision. The trial Court concluded that;

“It appears that respondents are owner of the shop in dispute and as per definition of the above referred provision, present case does not fall within the ambit of this provision”

The other reasons one may guess from the order were that the dispute between the parties was of tenancy in nature and the complainant has also approached civil Court for getting injunction and admittedly there were utility dues on the shop. Moreover the petitioner has also lodged FIR No.12/2014 against the respondents.

4. The trial court has also relied on the admission of the respondent that the movable articles which were lying in the demised shop on **13.1.2014** and belong to the petitioner were ordered to be handed over to the petitioner by the respondents. The very fact that the movable which belong to the petitioner were in possession of the respondents and handed over to the petitioner by the respondents after the Court orders confirms that the petitioner has been illegally dispossessed and even movable property of petitioner was forcibly retained by the respondents. Regarding civil suit No.121/2014 filed by the petitioner before Court of Sr. Civil Judge, suffice is to say that it was a case for permanent injunction by the tenant against his landlord to safeguard his rights to possess and hold the demised shop as tenant and to protect his such right from any unlawful dispossession at the hands of the respondents in derogation of the rent laws (**Article 4** of the constitution). It was not a dispute of ownership, and the petitioner's lawful right to occupy and hold possession of the demised shop had been frustrated by the respondents by use of force despite knowledge of civil suit filed by the petitioner seeking protection of court to be treated in accordance with law and not to be dispossessed by the respondents except through the application of SRPO, 1979. By all means the dispossession of petitioner from the demised shop in the light of the judgment of the Supreme Court reported in **2010 SCMR 1254** even at the hands of the respondents/ landlord/ owners attracts the provisions of **Section 3** of the Act of 2005. The refusal of learned IIIrd Additional Session Judge, (Central) Karachi to take cognizance on the ground that the petitioner has also lodged an FIR No.12/2014 was also contrary to the spirit of Illegal Dispossession Act particularly **Section 3(2)** of the Act of 2005. The use of expression “**without prejudice to any punishment to which he (offender) may be liable under any other law for the**

time being in force” seems to have escaped the attention of trial Court. The plain reading of **sub-section (2) of section 3** of the Act of 2005 suggest that lodging of any FIR or even civil suit is not a bar for initiating proceeding under the Act of 2005.

5. Learned IIIrd Additional Judge Central Karachi while passing the impugned order without assigning any reason declared that the case law reported in **2010 SCMR 1254** is not applicable in this case. It appears that the learned Trial Court has not even read the citation and failed to follow the authoritative pronouncement of the Hon’ble Supreme Court on the use of the words “No one” and “whoever” in **section 3** of the Act of 2005 in the following passages of the citation:-

9. “In the present case, “Heading” and “Preamble” of the Act only use the words “property grabbers”. These words have neither been defined in definition clause of the Act nor used in any part of it. Instead thereof section 3, which defines the offence under the Act uses the words “**no one**” in subsection 1 and “**whoever**” in subsection 2. These two phrases are of wide import, which will apply to all persons including property grabbers, Qabza group or land mafia. For advantageous purposes, section 3 is reproduced as under:-

“3. Prevention of illegal possession of property, etc.—(1) No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from others or occupier of such property.

(2) Whoever contravenes the provisions of the subsection (1) shall, without prejudice to any punishment to which he may be liable under any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provision of section 544-A of the Code.”

10. This Court has already examined this question in the case of Muhammad Akram (supra) and observed as under:-

“The provisions of subsection (1) of section 3 of the Illegal Dispossession Act, 2005 are in the form of preventive provisions. The section begins with the words; “no one shall...This is a prohibitory mandate. There is no restriction as to the class of person. All persons have been prohibited to commit the offence detailed in this provision, be he male or female.”

The Concise Oxford Dictionary defines the words “no one” as no person; nobody and “whoever” as any person or persons. Thus section 3 of the Act is very clear and unambiguous and its scope is wide enough to cover the class of persons mentioned in the preamble. Therefore, the preamble of the Act cannot restrict its meaning as such the Act would be

applicable to dispossession of a person from the property by **any person** including property grabber, Qabza group or land mafia.

6. In para-11 of the judgment, it has further been held by the Hon'ble Supreme Court that:-

“In such like cases, the criminal court is simply required to examine the material available before it to form an opinion as to whether a prima facie case is made out for holding that the person who has complained about his dispossession was in lawful possession or owner because the words used in section 3 of the Act are “owner” and “occupier” of the property. The word occupier has been defined in section 2(c) of the Act viz. “occupier” means the person who is in lawful possession of a property”.

7. In the case in hand, it is an admitted position that the petitioner was an “occupier” and his possession was lawful since he was admittedly a tenant in the demised shop, therefore, his dispossession was possible only through the application of Sindh Rented Premises Ordinance, 1979 (SRPO 1979). If the respondent were of the view that the petitioner was guilty of non-payment of utility bills, he was not supposed to take the law in his own hands. Instead of filing a rent case for ejectment of the Petitioner in terms of Section 15 of the SRPO 1979, the respondents choose to apply force to dispossess their tenant (the petitioner) by declaring that he has not paid utility bills. Such conduct of landlord / respondents in the language of **Section 3(1)** of the Act of 2005 was “without (having) any lawful authority” and therefore “whoever” were the respondents they had prima facie contravened the provisions of Sub-Section (1). It was not “lawful” for the respondents to enter into the demised shop and dispossess the tenant (the petitioner) from the demised shop despite the fact that they are/were landlords. The trial Court itself has mentioned in the impugned order that sometime in 2009 the respondents’ father had obtained an ejectment order in Rent Case No.511/1999 against the petitioner. If the judgment in R.C No.511/1999 was still in field, the respondents should have filed execution proceeding in the Court of the Rent Controller who has passed the ejectment order in the said rent case.

8. In view of admissions of respondent No. 2 that he has placed the shop under his lock read with the report of SHO filed under **Section 5** of the Act of 2005, it was a fit case for passing an interim orders in exercise of power conferred on court

under **Section 7(1)** of the Act of 2005 for putting the petitioner back in possession of the demised shop pending the trial. The provisions of Section 7(1) of the Act of 2005 are as follow:-

7. Eviction and mode of recovery as an interim relief.--- (1) If during trial the Court is satisfied that a person is found prima facie to be not in lawful possession, the Court shall, as an interim relief direct him to put the owner or **occupier**, as the case may be, in possession.

The two expressions that is “if during trial the court is satisfied” and “the court shall” in the above quoted provision casts a mandatory duty on court to be quick, vigilant and strict in “prevention of Illegal possession of property”. The trial has begun with the complaint and the admission of respondent No.2 and statements of witnesses furnished by the SHO with his report were prima facie strong case of petitioner and the court ought to have used its authority instead of flatly refusing to address the grievance of the petitioner.

9. It was indeed a case where the petitioner was deprived of several fundamental rights guaranteed to him under the constitution and law, which include the right to enjoy the protection of law and to be treated in accordance with law and the right of fair trial for determination of his civil rights in the demised shop (**Article 4** and **10-A** of the constitution of Islamic Republic of Pakistan, 1973). The Respondents have prima facie acted in derogation of law because they have failed to extend any legal justification for their conduct of taking the law in their hand and forcibly putting their locks on the demised shop when admittedly the Petitioner was “occupier” of the demised shop and his possession was “lawful possession” of the demised shop in terms of **section 2(e)** of the Act of 2005 which was protected under the SRPO, 1979.

10. The crux of the above discussion is that order dated **14.2.2014** passed by IIIrd ADJ (Central) Karachi in Criminal complaint No.56/2014 is set aside and the case is remanded to the learned District Judge (Central) Karachi with directions that the complaint should be disposed of after framing charge and recording evidence of

all the persons mentioned in the police report and / or any other witnesses that parties may choose to bring in support of their case. Since prima face strong case was made out by the petitioner from the police report and statement of the respondents themselves available in the court file, it is further ordered that in terms of **Section 7(1)** of the Act, 2005 pending the proceeding of Cr. Complaint No.56/2014 the possession of the demised shop should be handed over to the petitioner within 15 days either by the respondent themselves and/or whoever is in possession of the demised shop through the respondents and on their failure the Nazir of District Court (Central) Karachi with police aid put the petitioner in possession. Parties are directed to appear before District and Session Judge (Central) Karachi on **04.05.2015** on which date this case may be taken up by District Judge (Central) Karachi himself for expeditious disposal preferably within four months in accordance with law.

JUDGE

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