

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Muhammad Hashim Khan Kakar
Justice Salahuddin Panhwar
Justice Ishtiaq Ibrahim

Criminal Petition No.61-K of 2025

(On appeal against the order dated 18.03.2025
passed by the High Court of Sindh at Karachi in
Criminal Misc. Application No.31 of 2025)

Abbas Asif Zaman and another.Petitioners

Versus

The State and others.Respondents

For the Petitioners: Mr. Aamir Mansoob Qureshi, ASC
a/w petitioner.

For the State: Mr. Khadim Hussain, APG.

For the Complainant: Dr. Asif Zaman Khan (in person,
via video link from Karachi).

Assistance: Muhammad Subhan Malik
(Judicial Law Clerk)

Date of Hearing: 26.09.2025

JUDGMENT

Salahuddin Panhwar, J:- Through this petition, leave to appeal is sought against the order dated 18.03.2025, passed by the High Court of Sindh, Karachi, whereby Criminal Miscellaneous Application No.31 of 2025 was dismissed, affirming the order dated 05.12.2024 of the learned IXth Additional Sessions Judge, Karachi-South, in IDC No.4422 of 2024 admitting a complaint under section 3 of the Illegal Dispossession Act, 2005 (**the Act 2005**) and issuing bailable warrants of arrest against the petitioners.

2. The complainant, a retired medical doctor and a senior citizen, alleged that his two adult offsprings; a daughter and a son from a dissolved marriage, the petitioners, unlawfully dispossessed him of his house at 24-B, Sunset Boulevard, DHA Phase-II Extension, Karachi. He asserted that despite his financial support for their education at home and abroad, the petitioners became abusive and ultimately ousted him from his residence.

3. A complaint under sections 3, 4, 7 and 8 of the Act, 2005 was instituted. After calling a police *inquiry* and hearing the parties, the trial Court took cognizance under section 3 and issuedailable warrants. It observed that "*illegal dispossession*" extends to *controlling* or occupying property without lawful authority and is not confined to forcible *eviction*.

4. The petitioners *challenged* that order, arguing that the Act was designed to *curb* land grabbers and *mafias*, not to criminalise intra-family disputes, that they had resided in the property since birth with their father's permission, and that the complainant had voluntarily left after his second marriage. The High Court dismissed the challenge and upheld the trial Court's order.

5. We have heard learned counsel for the parties, *examined* the record and considered the legislative setting. The narrow question is whether a complaint under section 3 of the Act, 2005 can be maintained in a familial, *permissive-possession* setting between a father and his adult children, absent clear material indicating *mensrea* to dispossess, grab or unlawfully occupy.

6. The Act is a special penal statute intended to protect lawful owners and occupiers from forcible dispossession and land grabbing by unauthorised persons. This Court has repeatedly clarified that its reach is not restricted to so-called Qabza groups or land *mafias*, but any person who with force intrudes upon or controls the property of a lawful owner or occupier with the

intention to *dispossess, grab, control* or occupy may be proceeded against, provided the statutory ingredients are made out. See ***Niaz Ahmed v. Aijaz Ahmed*** (PLD 2024 SC 1152), ***Mst. Gulshan Bibi v. Muhammad Sadiq*** (PLD 2016 SC 769), ***Shaikh Muhammad Naseem v. Mst. Farida Gul*** (2016 SCMR 1931) and ***Mst. Inayat Khan v. Muhammad Ramzan*** (2012 SCMR 229). The earlier contrary, narrow view in ***Habibullah v. Abdul Manan*** (2012 SCMR 1533), has expressly been declared not good law and stands displaced by the later jurisprudence by this court. See ***Shaikh Muhammad Naseem v. Mst. Farida Gul*** (2016 SCMR 1931) and ***Mst. Gulshan Bibi v. Muhammad Sadiq*** (PLD 2016 SC 769).

7. It is pertinent to note that, Section 3 (3) of IDA, 2005 deals with the punishment of illegal dispossession, it reads as under:

"Whoever forcibly and wrongfully dispossesses any owner or occupier of any property and his act does not fall within sub-section (I), shall be punished with imprisonment which may extend to three years or with fine or with both, in addition to any other punishment to which he may be liable under any other law for the time being in force. The person dispossessed shall also be compensated in accordance with provisions of section 544A of the Code."

At this Juncture, it is expedient to examine the existing requirements of this legislation which is the term "forcibly", meaning thereby, to do something with "force". Coming to the facts of the case, it is pertinent to note that para 1, of the facts stated in leave to appeal petition filed by the instant petitioner read as under:

"As a result, the complainant and his wife moved out, leaving the respondents in occupation of the property". This statement itself depicts that the element of "force" seems to be absent here and therefore, this particular provision shall not be applicable.

8. Our constitutional and normative compass *reinforces* this calibrated reading. Pakistan's constitutional order places the family at the heart of social life. Articles 9 and 14 protect security of person and his *dignity* and privacy of the home. Article 31 obliges the State to enable Muslims to live in accordance with the injunctions of Islam, and Article 35 commands protection of the family, the mother and the child. In our *collective*, not *individualist*, social fabric the home is a site of mutual care, interdependence and trust. Islamic law and ethics accord the highest status to parents and the elderly and enjoin kindness, respect and service to them. Penal statutes must, therefore be *applied* so as to deter abuse without splintering family unions or *criminalising* ordinary frictions within them. To deploy the IDA 2005, in a permissive, fiduciary household setting risks over-criminalisation and distorts the statute beyond its text, purpose and spirit.

9. In the present case, the petitioners are the complainant's children. The record shows they were born into and continuously resided in the house with their father. Their presence originated in consent and familial obligation, not in any forcible taking. The material before the trial Court does not disclose the essential element of *mensrea* under Section 3, namely a deliberate and culpable intention to dispossess or grab. Even if relations subsequently soured and the complainant left after contracting a second marriage, that discord does not transmute a permissive, intra-family occupation into criminal trespass under the IDA 2005. The appropriate avenues in such settings are *civil*, such as suits for possession, partition or injunction, or recourse to the protective domestic-violence framework, not a special anti-land grabbing penal law. This approach is consistent with this Court's insistence that the Act applies where there is clear evidence of unlawful dispossession and does not fit contexts where the legal relationship explains possession.

10. This is not to say that close kin enjoy an exemption from the Act. Where an owner parent is, by force or intimidation, physically ousted and prevented from residing in or accessing the home, and the statutory ingredients are present, criminal accountability may follow despite blood ties. Our holding is limited to the facts here, where the record does not disclose forcible ouster or guilty intent and where the petitioners' possession flows from *long-standing, permissive residence*.

11. There is, in parallel, a protective statutory framework that ought to be kept in view. The Sindh Domestic Violence (Prevention and Protection) Act, 2013 defines an aggrieved person *broadly* and secures, through section 9, the right of residence of a *woman, child* or other vulnerable person in the shared household, subject to due process. Section 19 mandates Protection Committees at district level with multi-disciplinary membership including psychology and social welfare expertise.

12. The Illegal Dispossession Act, 2005 was enacted to shield persons in settled possession from land grabbers and violent or lawless ouster, not to furnish a shortcut for private parties in domestic or intra-family disputes. Its provisions operate as protections, not weapons. On the facts before us, Petitioner No. 2 is the complainant's daughter and a woman claiming shelter within the family home. Any attempt to remove her must proceed through due process in the civil forum, for example by a suit for possession, partition or injunction as may be advised, or by recourse to protective family laws where applicable, rather than by criminalization under the IDA 2005. This approach accords with the broader normative framework that places a premium on the dignity, security and maintenance of women within the family. In that regard, the Sindh High Court in ***Hina v Province of Sindh* (PLD 2019 Sindh 363)** observed:

"None can deny the fact that Religion of Islam places much insist on 'dignity/parda' of the women and despite giving 'woman' equal rights

yet does not consider her "identical" with 'man'. The biological makeup of the man and woman, difference of physiology and psychology, the creator (Allah Almighty) Himself has defined duties and obligation (s) of both. Such defined difference places the 'man', in all normal situations, to ensure protection of dignity and life of the 'women', which too, without crossing the ordained limits. Further, the typicality of our culture and custom never prepares a 'women' from her very beginning (childhood) for earning livelihood. Despite, changing/developing status of a 'woman' from 'daughter to wife' and 'wife to mother', she has been assured of her 'maintenance' by the 'men' regardless of his status as 'father; brother; husband or son (capable of earning).

This has been the reason that very touch-stone of measuring 'respect' of a 'man' has not been attached to his poverty or wealth but as stated by the Holy Prophet (PBUH) that:

"Among you the most respectable is the one who respects women and the most disrespect is the one who disrespects the women"

The Holy Prophet also said "It is the generous (in character) who is good to women and it is the wicked who insults them".

13. Implementation of the section 19 of the Sindh Domestic Violence (Prevention and Protection) Act, 2013 remains uneven. We reiterate that the Government of Sindh shall ensure that Protection Committees are fully constituted and functional in every district, with psychologists and psycho-social workers included, and that their referral pathways are activated so that families are supported and vulnerable persons safeguarded without resort to over-broad penal process.

14. In the federal capital, the Islamabad Capital Territory Senior Citizens Act, 2021 exists, however the provinces bear the primary responsibility for social protection. Domestic-violence frameworks are uneven in their protection of vulnerable persons. Sindh and Balochistan already define the aggrieved person broadly to include any vulnerable person alongside women, whereas in Punjab and Khyber Pakhtunkhwa protection is largely confined to

women. Sindh and Khyber Pakhtunkhwa have long enacted senior-citizen statutes, and Balochistan has followed suit, while Punjab has to date only tabled a Senior Citizens Welfare Bill. These divergences lead to protection turning on geography rather than need and invite a principled harmonisation that respects provincial autonomy yet secures a baseline of dignity for the elderly and other dependants.

15. Comparative practice provides workable templates that are civil-first and household-sensitive. India's Maintenance and Welfare of Parents and Senior Citizens Act, 2007 establishes summary maintenance tribunals. Bangladesh's Parents Maintenance Act, 2013 imposes a statutory duty on adult children to maintain parents. Sri Lanka's Protection of the Rights of Elders Act, 2000 creates a National Council and a maintenance-tribunal mechanism. Nepal's Senior Citizens Act, 2006 establishes duties and a welfare fund. Singapore's Maintenance of Parents Act, 1995 provides a specialised tribunal. Several Canadian provinces and United States jurisdictions retain targeted filial-responsibility provisions. These comparators illustrate proportionate, non-criminal solutions that strengthen family bonds rather than fracture them.

16. It is constitutionally appropriate and *administratively* imperative for the Province of Punjab to consider two complementary tracks. First, widening the definition of aggrieved person in its domestic-violence law to include any vulnerable person, thus allowing swift civil-protective relief for dependent elders within the household sphere. *Secondly*, enacting, on the lines of the Punjab Senior Citizens Welfare Bill, 2025, a rights-and-maintenance statute that creates a dedicated council, a modest welfare fund and a simple, summary tribunal for parental maintenance and care. Such a statute could provide notice-based, conciliatory procedures, calibrated orders for residence, maintenance and care plans, quick enforcement, and penalties that

are civil in the first instance, reserving criminal sanction for contumacious non-compliance. This approach would align with Articles 9, 14, 31 and 35 of the Constitution and with our collective ethos that venerates parents and protects family life.

17. Turning back to the case, we find that the trial Court's admission of the complaint under section 3 of the Illegal Dispossession Act, 2005 and the issuance of bailable warrants proceeded on an erroneous view of the statute's scope. The High Court's order sustaining that approach cannot be maintained to that extent. The dispute at best discloses a breakdown of familial relations and competing claims to reside in the shared household. That terrain is to be managed through civil process and, where applicable, through the protective mechanisms of domestic-violence legislation, not through the criminal process fashioned to combat land grabbing. Our analysis accords with this Court's settled articulation of the Act's elements and reach. **See *Niaz Ahmed, Mst. Gulshan Bibi, Shaikh Muhammad Naseem, and Mst. Inayatan Khatoon* *ibid*.**

18. For these reasons, the petition is converted into appeal and allowed. The orders of the Courts below, to the extent they take cognisance of an offence under section 3 of the Illegal Dispossession Act, 2005 and issue bailable warrants, are set aside. The complaint stands dismissed accordingly. It is clarified that nothing in this judgment curtails the complainant's right, as owner, to enter and reside in the subject property. Equally, Petitioner No. 2's residence as a woman within the shared household stands protected except in accordance with due process under the applicable civil and protective laws. Neither side shall obstruct the other's peaceful ingress, egress or residence until varied by a competent civil or family Court. The petitioner and his daughter would be at liberty to approach the concerned Magistrate under Sindh Domestic Violence (Prevention and Protection) Act, 2013.

19. Before parting, we issue the following directions in aid of fundamental rights and statutory purpose. First, the Government of Sindh shall ensure, within ninety days, the constitution and effective functioning of Protection Committees under section 19 of the Sindh Domestic Violence (Prevention and Protection) Act, 2013 in every district. Secondly, the Law and Parliamentary Affairs Department, Government of the Punjab, shall examine this aspect and proceed accordingly, as well as introduce a senior-citizen welfare code with a council fund and simple maintenance tribunal on the lines indicated above. Copies of this judgment shall also be forwarded to the Law Departments of Balochistan and Khyber Pakhtunkhwa for information and any analogous measures they may deem appropriate through Chief Secretary and Advocate Generals of respective provinces for compliance.

20. The appeal is allowed in the above terms. No order as to costs.

Judge

Judge

Judge

Islamabad
26.09.2025
Muhammad Subhan Malik (JLC)/-
Approved for reporting

Announced in open Court on 15th October, 2025.

Judge