

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Criminal Revision No. 114/2019

Muhammad Rafiq, etc.

Versus

Tasadaq Hussain, etc.

Petitioners by: Sayyid Murtaza Ali Pirzada, Advocate.

Respondents by: Ch. Asif Irfan, Advocate.

Date of Decision: 25.02.2020.

MOHSIN AKHTAR KAYANI, J. Through this criminal revision, the petitioners have assailed the order dated 09.10.2019, passed by learned Additional Sessions Judge (East), Islamabad, whereby application U/S 539-B Cr.P.C. filed by the petitioners has been dismissed.

2. Learned counsel for the petitioners contends that petitioners filed complaint U/S 3 of the Illegal Dispossession Act, 2005 against the respondents/accused for illegal dispossession of the petitioners from the plot measuring 10 Marlas situated in Khewet No.293 to 295, Khatooni No.422 to 447, Revenue Estate Humak, Tehsil and District Islamabad; that respondents were summoned by the Court, charge was framed and evidence was recorded, however, the question relating to the demarcation of the disputed plot requires adjudication and as such the application filed by the petitioners was dismissed without considering the law on the subject; that Section 539-B Cr.P.C. is meant to cater the question of local inspection which is necessary for

the purpose of properly appreciating the evidence; that trial Court has dismissed the application without observing the law.

3. Conversely, learned counsel for the respondents contends that complaint was filed on 28.11.2016 on the basis of alleged incident of dispossession committed in the first week of 2012 and first report by the police was submitted on 05.12.2016, second report was submitted on 28.02.2017 and charge was framed on 07.04.2017; that evidence has been completed and statement U/S 342 Cr.P.C. has been recorded on 26.03.2018 and as such the demarcation report dated 02.01.2019 is available on record which is based upon special procedure provided in Illegal Dispossession Act, 2005 and as such the second application on similar grounds is not justified.

4. Arguments heard, record perused.

5. From the perusal of record, it has been observed that petitioners are mainly aggrieved with the order dated 09.10.2019, passed by learned Additional Sessions Judge (East), Islamabad, whereby application U/S 539-B Cr.P.C. for the inspection of the disputed plot has been turned down.

6. The record reflects that petitioners have filed criminal complaint U/S 3 of the Illegal Dispossession Act, 2005 against the respondents for their dispossession from the disputed plot. The respondents were summoned by the trial Court after considering the police report dated 05.12.2016 and 28.02.2017, where-after charge was framed on 07.04.2017 and even after conclusion of prosecution evidence statements of respondents/accused in terms of Section 342 Cr.P.C. were recorded on 26.03.2018. A commission was appointed by the Court under special procedure provided in Proviso of Section 5(1) of the Illegal Dispossession Act, 2005, which is as under:-

5. Investigation and procedure.- (1) Upon a complaint the Court may direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court: **Provided** the Court may extend the time within which such report is to be forwarded in case where good reasons are shown for not doing so within the time specified in this subsection.

The report dated 02.01.2019 prepared under the above referred provision shall be construed as evidence in the case, which is available on record although petitioners have filed objection to the said report which is pending and as such the case is at final stage when application U/S 539-B Cr.P.C. has been filed for local inspection, the said provision is as under:-

539-B. Local inspection. (1) Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding, after due notice to the parties visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost.

7. While considering the above provision of law, I have gone through the application U/S 539-B Cr.P.C. which was filed by the petitioners being aggrieved with the local commission report dated 23.01.2019 in which it has been alleged that **"the Report is vague, incomplete, partial, biased, arbitrary and capricious"**, all these allegations might be relevant when the trial Court will decide the fate of this main case as well as the local commission report, however, at this stage no such allegation has been justified through record. Similarly, the case filed by the petitioners is regarding 10 Marlas of land situated in Mouza Humak from which they were dispossessed by the

respondents as alleged in the complaint but the said incident had taken place in first week of 2012 and the complaint was filed in 2016.

8. Besides the above referred position, Section 9 of the Illegal Dispossession Act, 2005 provides the application of Criminal Procedure Code, 1898 unless otherwise provided in this Act the provision of the Code of Criminal Procedure, 1898 shall apply to the proceedings under this Act, this aspect of law if seen in juxtaposition with the requirement of Proviso of Section 5(1) of the Illegal Dispossession Act, 2005, the local inquiry has already been made by the Magistrate through a Revenue Officer vide report dated 02.01.2019 available on record and as such when special procedure is provided, similar provision of Cr.P.C. could not be applied, therefore, justification raised by the petitioners is not made out from record, nor legal authority supports the view taken by the petitioners in the instant criminal revision. No illegality has been observed by this Court in the impugned order to interfere in the same, even otherwise, evidence has been completed, inspection report as well as other reports are available on record, hence, any such application at this stage amounts to further delay the proceedings, therefore, instant criminal revision is misconceived and the same is hereby dismissed. However, learned trial Court seized with the matter is directed to conclude the same within next 30 days under intimation to this Court.

(MOHSIN ĀKHṬAR KAYĀNI)
JUDGE

Zahid