

**FORM NO.HCJD/C**  
**JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

Writ Petition No. 1503 of 2010

**Anjum Mubashar Mughal**  
**vs.**  
**Additional District & Sessions Judge, Islamabad &**  
**Another.**

**Date of hearing** : 08.05.2012

**Petitioner by** : Mr.Sher Afzal & Mr.Muhammad Saleem  
Baluch, Advocates.

**Respondent by** : Syed Muhammad Tayyab Advocate.

**NOOR-UL-HAQ N. QURESHI J.-** Through the instant writ petition, order dated 9.2.2010, passed by Mr.Shahid Islam Ghilzai, Additional Sessions Judge, Islamabad has been impugned seeking the same to be declared as illegal, perverse and ultra virus.

2. Brief facts, necessitated filing of the instant writ petition are that the petitioner filed a complaint u/s 3 of the Illegal Dispossession Act, 2005 against respondent No.2. The said petition was entertained and entrusted to learned Additional Sessions Judge, Islamabad. The petitioner also filed an application u/s 7 of the Illegal Dispossession Act, 2005, when the respondent No.2 moved an application u/s 265-K, Cr.P.C seeking acquittal from the case. During pendency of the said complaint, report from the concerned police station was called, which too supported the allegations leveled in the complaint about the act of illegal dispossession by the respondent.

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However, the Court concerned while passing the order dated 9.2.2010 dismissed the complaint of the petitioner u/s 265-K, Cr.P.C.

3. Learned counsel for the petitioner argued that despite formalities completed even the bond required by the Court was executed by the respondent/accused. Sufficient material was available on the record to connect the accused with the commission of the offence. Fully substantiated the allegations leveled in the complaint, when suddenly while entertaining such application u/s 265-K, Cr.P.C moved by respondent No.2 the complaint was dismissed, which is totally contrary to the scheme of law. Learned counsel for the petitioner relied upon PLD 2008 Lahore 358, PLD 2008 Lahore 59 & 2010 P.Cr.L.J 422.

4. Learned counsel for the respondent directly hit the maintainability of the writ petition. He argued that acquittal u/s 265-K, Cr.P.C is an appealable order could be challenged by invoking jurisdiction of the Appellate Court u/s 417, Cr.P.C. He argued that writ petition is therefore, not maintainable and proper remedy same requires to be dismissed summarily. He also argued that a complaint is required to be presented. In view of section 4(h) Cr.P.C defines the complaint, not includes the FIR. Therefore, by following the procedural law, the complaint should have been filed by the complainant before the concerned Magistrate, which in compliance with section 190, Cr.P.C while taking cognizance should have been sent to the learned Sessions Court. He also contended that direct cognizance by the Sessions Court is barred by law as envisaged in section 193, Cr.P.C, therefore, very taking cognizance by the Sessions Court since was illegal, hence, rightly the order of acquittal

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was passed. He also argued other important features that the petitioner is neither owner, nor the occupier as required by section 2 of the Illegal Dispossession Act, 2005. He referred page 34 of the petition, which is second page of written statement, wherein the petitioner himself admitted such fact of not being owner and the ownership actually lies with his father.

5. Arguments heard, record perused as well as the case laws relied upon by learned counsel for the petitioner.

6. In view of the general complexion there requires no need to proceed other aspect of the case except the maintainability of the writ petition.

7. It is very astonishing to note that learned Additional Sessions Judge, Islamabad while dismissing the complaint exercised powers u/s 265-K, Cr.P.C, which on the face of it is an approach beyond the law, which is discussed in the following Paragraphs:-

8. Hence, I hold that the petition is maintainable. So for the concern of the very relevant provisions of law, I would like to discuss the very cognizance initiated by the learned Additional Sessions Judge. As required by section 4 of the Illegal Dispossession Act, 2005 cognizance is to be taken directly by the Sessions Court on a complaint, therefore, no need to comply the procedure laid down u/s 190, Cr.P.C by making complaint before the Magistrate directly, who after entertaining the same required to transmit to the Court of Sessions, if offence is cognizable by such Court. So for the concern of bar on direct cognizance as envisaged in section 193, Cr.P.C in my humble view when said law provides direct cognizance, it can not create hurdle in the way of Sessions Court for taking cognizance on

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making a complaint. It is further clarified while going through section 9 of the Illegal Dispossession Act, 2005, which positively leading towards an aspect of applicability of Cr.P.C unless otherwise provided in the act. Since direct cognizance is provided by section 4 by the Court of Sessions, therefore, to that extent such bar can be taken into consideration. It is an admitted fact that application of the Cr.P.C provided by section 9 with certain limitations with regard to the provisions provided by the very act. For convenience section 9 of the Illegal Dispossession Act, 2005 is reproduced herein as under:-

**"Application of Code.**----Unless otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1898 (V of 1898), shall apply to proceedings under this Act."

9. So for the applicability of section 265-K, Cr.P.C is concerned, which has been exercised by the learned trial Court while dismissing the complaint, it will be appropriate to discuss such legal aspect also. Section 265-K, Cr.P.C provides a legal relief to the accused person, whose case during trial in the opinion of the Court, if appears to be a such nature where either charge is ground less, or there is no probability of accused being convicted. Under such circumstances the said provision of law is to be pressed into service for those accused to be prevented from the futile exercise of concluding trial against a person innocent facing false charges or no case is made out. Section 265-K, Cr.P.C is reproduced herein as under:-

**"Power of Court to acquit accused at any stage.** Nothing in this Chapter shall be deemed to prevent a Court from acquitting an accused at any stage of the case, if, after hearing the prosecutor and the accused and for reasons to

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be recorded, it considers that there is no probability of the accused being convicted of any offence."

10. From the proposition of law, it becomes crystal clear that section 265-K, Cr.P.C can not be meant for dismissal of the complaint, though there is no procedure provided by CHAPTER XXII-A of Cr.P.C defining the trial before High Court and Courts of Sessions but there are certain provisions, which can be borrowed in view of guide lines time to time provided by the Superior Courts being legal principle enunciated.

11. So for the concern of dismissal of the complaint, there are certain provisions provided by the law, which relates to the Magisterial procedural law. I would like to emphasize application of section 203 and section 147, Cr.P.C, both provisions provide the guide lines for the dismissal of the complaint.

12. The very question now remains in the filed as to whether the Court of Sessions as defined in section 9, Cr.P.C can dismissed the complaint while exercising powers u/s 265-K, Cr.P.C . The same in view of above discussion is explicitly clear that such powers not include while referring ingredients of section 265-K, Cr.P.C. Therefore, the very order passed by the leaned trial Court is ipso facto illegal on the face of it. Since the learned trial Court has not acted according to law, neither it appears to be a case of dismissal of the complaint by exercising powers under the relevant provisions of law, nor is a case of acquittal against which an appeal u/s 417, Cr.P.C could have been preferred. I, therefore, observing such illegalities on the part of learned trial Court, consequently the order dated 9.2.2010 passed by the learned trial Court is hereby set

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aside, as a result whereof the case is remanded back to learned trial Court for its decision afresh in accordance with law. The writ petition is thus accepted.

**(NOOR-UL-HAQ N. QURESHI)**  
**JUDGE**

R.Anjam.

**APPROVED FOR REPORTING.**

*usd*

*Blue slip added.*

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