

## **JUDGMENT SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

**W.P. No. 4137/2012.**

Waseem Habib and another

*Versus*

I.G. Police, Islamabad, etc.

**Petitioners by:** Mr. Qaiser Imam Ch., Advocate.

**Respondents by:** Malik Awais Haider, State Counsel.  
Mr. Rizwan Shabbir Kayani, Advocate.  
Khalid Awan, S.I., P.S. Sihala, Islamabad.

**Date of Decision:** 21.11.2019.

**MOHSIN AKHTAR KAYANI, J:** Through this Writ Petition, the petitioners have assailed the order dated 02.10.2012, passed by learned Ex-Officio Justice of Peace, Islamabad whereby application U/S 22-A Cr.P.C. filed by the petitioners was dismissed.

2. Learned counsel for the petitioners contends that petitioners filed an application with the allegation that proposed accused/respondents No.8, 9 & 10 have dispossessed the tenants of the petitioners from the shops on 13.09.2012 at about 08:00 a.m. on gunpoint and locked the shops whereas all this was committed in connivance with Abdul Rasheed; that petitioner No.1 purchased all the shops through registered sale deed after execution of agreement to sell dated 10.07.2012 against the sale consideration of Rs.47,00,000/-, whereas Abdul Rasheed was previous owner who opted to become tenant of the petitioner after sale of the said shops and facilitated the proposed accused to deprive the petitioners from their lawful ownership and rights on gunpoint; that application was submitted to the SHO P.S. Sihala but no criminal case was registered, even learned Ex-Officio Justice of Peace, Islamabad has not appreciated the record and law in proper manner.

3. Conversely, learned counsel for the proposed accused/respondents contends that respondents are also owners of subject land and as such matter is pending before the Civil Court and even police has submitted the report in favour of respondents and no cognizable offence has been made out.

4. Arguments heard, record perused.

5. Perusal of record reveals that application filed by the petitioners dated 13.09.2012 discloses that proposed accused/respondents No.8, 9 & 10 dispossessed the tenants on 13.09.2012 at about 08:00 a.m. on gunpoint from shops owned by the petitioners and locked the same in connivance with Abdul Rasheed, who was the ex-vendor/previous owner of the subject premises, who entered into agreement dated 10.01.2011 with the petitioners for sale of the subject land and even sale deed was executed on 10.07.2012 before Sub-Registrar, Islamabad. The petitioners *prima-facie* demonstrated that lease agreement was executed after purchase of shops by the petitioner's side and petitioners have received rent of two months approximately when the alleged incident took place.

6. I have also perused the report submitted by the SHO P.S. Sihala, which reflects that there was some dispute and the stance taken by the petitioners was confirmed through inquiry conducted by Muhammad Iqbal, S.I. dated 23.09.2012 in which tenant namely Muhammad Arshad (Hamam), Zulfiqar (Denter) and Mubashir Khan (Diesel Mechanic) who have supported the stance of the petitioners but all these aspects have not been considered by the learned Ex-Officio Justice of Peace, Islamabad, who has simply dismissed the application that "both the parties are alleging their ownership regarding the suit shops and it seems that there exists some dispute regarding the status of shops in reference of filed number. The dispute can only be settled by a civil court." These findings should have been settled in the evidence as petitioners have established *prima-facie* case that cognizable offence has been made out. The dispossession of the tenants is apparent from the suit shops, whereas proposed accused as well as

police report while acknowledging the stance of the petitioners further complicated the matter by referring that shops are situated in different field number, although the possession of the shops were delivered by the Abdul Rasheed who is nominated as accused in this case, hence, commission of cognizable offence is made out on the alleged incident and latter on respondents' side filed a civil suit, therefore, instant writ petition is allowed. Resultantly, impugned order dated 02.10.2012, passed by learned Ex-Officio Justice of Peace, Islamabad is hereby set aside. SHO P.S. Sihala is directed to register criminal case in accordance with law on the application submitted by the petitioners.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid