

Judgment Sheet  
**PESHAWAR HIGH COURT, PESHAWAR**  
(Judicial Department)

**Cr. M (Quashment) 83-P/2023**

**Muhammad Saleem  
Versus  
The State & 2 others**

**JUDGMENT**

**Date of hearing**      **16.02.2024**  
Petitioner by      Mr. Muhammad Sajid Khan, Advocate  
State by      Ms. Shehnaz Tariq, AAG  
Complainant by      Mr. Aqil Muhammad, Advocate

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**IJAZ ANWAR, J.** Through the instant petition under S. 561-A Cr.PC, the petitioner seeks quashment of the proceedings, initiated by the learned Additional Sessions Judge, Lahor, District Swabi, on the application of respondent No.3 for the recovery of compensation payable to him by the petitioner under S. 544-A Cr.PC as per the verdict of the learned trial Court dated 07.10.2021 rendered in his complaint under Sections 3/4/6/7 of the Illegal Dispossession Act, 2005, upheld by this Court while deciding **Cr. A 893-P/2021** on 24.01.2022, as well as by the august Apex Court in **Criminal Petition No.199 of 2022**, vide judgment & order dated 10.6.2022.

2. After final verdict of the august Apex Court, the respondent applied the learned trial Court for the recovery of compensation under S. 544-A Cr.PC, wherein proceedings were initiated; however, the petitioner, being aggrieved of the same, has filed the instant quashment petition, on the grounds, inter alia, that after final judgment, the learned trial Court has become *fuctus officio* and cannot execute its own order.

3. Arguments heard and record perused.

4. A perusal of the record would reveal that the learned trial Court while deciding the complaint of the respondent on 07.10.2021, convicted the petitioner under S. 3(2) of the Illegal Dispossession Act, 2005 and sentenced to undergo ten (10) years imprisonment (RI) with fine of Rs.1,00,000/-, and in default of payment of fine to undergo six (06) months SI; besides, he was fined Rs.10,00,000/- as compensation payable to the respondent under S. 544-A Cr.PC for the agonies and anguishes sustained due to unlawful act of the petitioner. As against that, this Court dismissed the appeal of the petitioner on 24.01.2022 and maintained the judgment of the learned trial Court, while the august Apex Court partially allowed **Criminal Petition No.199 of 2022** of

the petitioner on 10.6.2022 only to the extent of reduction in the sentence from ten years rigorous imprisonment to three years rigorous imprisonment while maintaining his conviction, and the rest of fine etc, remained intact.

5. It is pertinent to mention here that payment of rupees one million compensation under S. 544-A Cr.PC as ordered by the learned trial Court was maintained upto the august Apex Court. The learned trial Court, however, on the application of the complainant proceeded with the execution of the order for the recovery of said compensation and issued orders for the attachment of petitioner/convict's property.

6. The compensation payable under S. 544-A Cr.PC is recoverable as an arrears of land revenue; S. 544-A sub-section (2) being relevant is reproduced as under for the sake of convenience;

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***[544-A. Compensation to the heirs of the person killed, etc. [(1) Whenever a person is convicted of an offence in the commission whereof the death of or hurt, injury, or mental anguish or psychological damage to, any person is caused or damage to or loss or destruction of any property is caused, the court shall when convicting such person, unless for reasons to be recorded in writing it otherwise directs, order the person convicted to pay to the heirs of the person whose death has been caused,***

*or to the person hurt or injured, or to the person to whom mental anguish or psychological damage has been caused, or to the owner of the property damaged, lost or destroyed, as the case may be, such compensation as the court may determine having regard to the circumstances of the case';]*  
and

*(2) The compensation payable under sub-section (1) shall be recoverable as [an arrear of land revenue] and the court may further order that, in default of payment or of recovery as aforesaid the person ordered to pay such compensation shall suffer imprisonment for a period not exceeding six months, or if it be a Court of the Magistrate of the third class, for a period not exceeding thirty days.*

*(3) .....  
(4) .....  
(5) ..... ”*

From bare reading of the afore-said provision of law, it is clear that the amount of compensation is to be recovered as an arrears of land revenue in accordance with the provisions of the Land Revenue Act, 1967. Section 80 of this Act provides for the mode and manner in which the recovery of arrears is to be made, it being relevant is reproduced as under;

*80. Subject to the other provisions of this Act, an arrear of land-revenue may be recovered by any one or more of the following processes namely: -*

*(a) by service of a notice of demand on the defaulter under section 81;*

*(b) by arrest and detention of his person under section 82;*

*(c) by districts and sale of his movable property and uncut or ungathered crops under section 83,*

*(d) by transfer, under section 84, of the holding in respect of which the arrear is due;*

*(e) by attachment, under section 85, of the holding in respect of which the arrear is due;*

*(f) by annulment, under section 86, of the assessment of that holding;*

*(g) by sale of that holding under section 88;*

*(h) by proceedings against other immovable property of the defaulter under section 90."*

It is further clarified that under S. 81 of the *ibid* Act, such process is to be initiated by the revenue officer on or after the day following that on which an arrear of land revenue accrues; thereafter, the whole mechanism from arrest and detention under S. 82, if arrears are not paid to proceed against his movable and immovable property under S. 90 of the Act for the recovery of arrears would follow. Thus, in the whole process, the trial Court ordering for compensation under S. 544-A Cr.PC does not picture anywhere. Admittedly, the compensation so granted is not an arrears of land revenue, however, the only mode for the recovery of land arrears as provided under the Land Revenue Act, 1967 is to follow and therefore, when

once conviction and sentence has been handed down by the learned trial Court, it has got no such powers left to act as an executing Court for the recovery of compensation.

7. In this view of the matter, this quashment petition is allowed, the proceedings before the learned trial are quashed, and the respondent complainant is at liberty to submit his petition before the quarter concerned for the recovery of compensation amount in accordance with law.

**Announced:**  
16.02.2024

  
JUDGE

*\*Nazir\**

(SB)

*Hon'ble Mr. Justice Ijaz Anwar, J*