

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

Criminal Petition No. 58-K of 2023

Against the Order dated 01.03.2023
passed by the High Court of Sindh,
Karachi, in Crl. Misc. Application
No.94/2022

Aurangzaib Alamgir

...Petitioner

Versus

Muhammad Sajid & others

...Respondent(s)

For the Petitioner:

Mr. Shoaib M. Ashraf, ASC
Mrs. Abida Parveen Channar, AOR

Mr. Ameerudin, ASC

Assisted by Dr. Muhammad Shahrukh,
Advocate High Court.

For Respondents No.1-2: Nemo

For the Respondent No.3: Mr. Saleem Akhtar, Additional Prosecutor
General, Sindh.

Date of Hearing: 15.10.2024

Judgment

Muhammad Ali Mazhar, J.- This Criminal Petition is directed against the Order dated 01.03.2023, passed by the learned High Court of Sindh, Karachi, whereby Crl. Misc. Application No.94 of 2022 filed for quashment of proceedings was dismissed.

2. The minutia of the controversy reflects that the respondent No.1 filed a complaint under Section 3 of the Illegal Dispossession Act, 2005 ("Act") whereby he complained that he is the owner of property No. 64, Muslimabad Cooperative Housing Society, and the

accused/petitioner occupied the same illegally and without having any lawful authority. The inquiry was assigned by the learned District and Sessions Judge, Karachi East, in the Illegal Dispossession Application No.129/2021 to the SHO, Police Station, Jamshed Quarters, Karachi, under Section 5 of the Act. The SHO conducted the inquiry and submitted the report. Consequently, on 15.12.2021, the learned District and Sessions Judge, Karachi East, took cognizance of the matter, which was challenged by the petitioner in the High Court. However, the quashment petition was dismissed by means of the impugned Order.

3. The aforesaid Criminal Petition was fixed in this Court on 06.08.2024 before the learned Division Bench, and while issuing notice for the next session, this Court suspended the operation of the impugned Order. Today, nobody is present to represent the respondents No.1 & 2.

4. The learned counsel for the petitioner argued that the learned Trial Court and High Court failed to recognize that a criminal complaint could not be filed through an attorney. It was further contended that the complaint filed under Section 3 of the Act was based on controversies arising from civil suits and a High Court appeal pending between the parties. He further argued that from the contents of the complaint, it was apparent that no case of illegal dispossession was made out. Yet, the Trial Court took cognizance without adverting to the crucial fact that the title of respondent No.1/complainant was challenged by the deceased owner during her life time in Civil Suit No. 1352 of 2004. He further argued that the learned High Court, without appreciating various tangible grounds raised in the quashment petition, dismissed the petition in a cursory manner, despite at least 3 civil suits pending in the Sindh High Court between the same parties and concerning the same properties. He further averred that the learned Trial Court took the cognizance on 15.12.2021, while the Crl. Misc. Application was filed in the High Court on 01.02.22, just after 2 months of taking cognizance but the petition was decided by the High Court on 01.03.2023. It shows that at least there was no delay on part of

the petitioner in invoking the jurisdiction of the High Court for the quashment of the criminal complaint.

5. The learned Additional Prosecutor General, Mr. Saleem Akhtar, has also gone through the impugned Order and the quashment petition and he is also of the view that the High Court did not properly appreciate the grounds raised in support of the quashment petition before dismissing it. He, thus, argued that this is a fit case for remand so that the grounds raised may be considered in accordance with law.

6. Heard the arguments. We are mindful that under Section 561-A of the Code of Criminal Procedure, 1898 ("Cr.P.C."), it is unequivocally provided that nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such order as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. There is no doubt that a High Court can quash a judicial proceeding pending before any subordinate court under Section 561-A, Cr.P.C., in order to prevent the abuse of the process of that court or otherwise to secure the ends of justice. At the same time, this inherent jurisdiction cannot be deemed to be an alternative jurisdiction or additional jurisdiction and cannot be exploited to disrupt or impede the procedural law on the basis of presumptive findings or hyper-technicalities. Instead, it is intended to protect and safeguard the interests of justice and to redress grievances of aggrieved persons, for which no other procedure or remedy is provided in the Cr.P.C. The background of exercise of this inherent jurisdiction has been very elaborately discussed in the case of Shahnaz Begum Vs. the Hon'ble Judges of the High Court of Sindh and Balochistan and another (**PLD 1971 SC 677**), wherein it was laid down that inherent jurisdiction of a High Court under section 561-A, Cr.P.C., spans over judicial orders and not orders passed or steps taken during an investigation of a case by the police under the Cr.P.C. At this juncture, it must be noted that the remedy provided under Section 561-A, Cr.P.C., cannot be construed as an alternate remedy or substitute for an express remedy provided under Sections 249-A or 265-K, Cr.P.C.,

as the case may. Therefore, the ordinary remedy provided under the law cannot be bypassed or circumvented. To further elaborate, if we look at Section 249-A provided in Chapter XX (Of the Trial of Cases by Magistrates), Cr.P.C., in juxtaposition, it accentuates the powers of the Magistrate to acquit an accused at any stage of the case if, after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence. Likewise, Section 265-K, Cr.P.C., as provided in Chapter XXIIA (Trials before High Courts and Courts of Session), has also vested in the Court the powers to acquit the accused at any stage of the case, if, after hearing the prosecutor and the accused and for reasons to be recorded, it considers that there is no probability of the accused being convicted of any offence. However, according to the judicial consensus and unanimity matured on the characteristics of inherent jurisdiction of the High Court under Section 561-A, Cr.P.C., it is well-established that the inherent jurisdiction so conferred is curative in nature.

7. In fact, the expression “abuse of process” used under Section 561-A, Cr.P.C., connotes an unwarranted or irrational use of legal proceedings or process which also includes the presence of ulterior motives for activating the process for unjustified arrest or groundless criminal prosecution. The essential purposefulness of this doctrine is to foster and safeguard the judicial system, ensuring that it is not misused or blemished. This terminology can be comprehended as an acuity that if a Court has jurisdiction to hear a case, it may terminate the prosecution if an abuse of process is floating on the surface on record, with logical reason and probability of exasperation, persecution, and unfairness to the opposite side. In the case of Canadian Union of Public Employees Vs. City of Toronto (2003 SCC 63), the Supreme Court of Canada held that “Judges have an inherent and residual discretion to prevent an abuse of the court’s process. This concept of abuse of process was described at common law as proceedings “unfair to the point that they are contrary to the interest of justice” (R. v. Power, [1994] 1 S.C.R. 601, at p. 616), and as “oppressive treatment” (R. v. Conway, [1989] 1 S.C.R. 1659, at p. 1667). McLachlin J. (as she

then was) expressed it this way in R. v. Scott, [1990] 3 S.C.R. 979, at p. 1007. It was further held that abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in a fair trial. But the doctrine evokes as well the public interest in a fair and just trial process and the proper administration of justice" [Ref: <https://criminalcpd.net.au/wp-content/uploads/2017/01/abuse-of-judicial-process-criminal-cle-0117>]. The definition provided in different law lexicons are also quite relevant, which are reproduced as under:-

Black's Law Dictionary (Bryan A. Garner, 9th Edition) at Page 11

Abuse of Process: The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope. Also termed abuse of legal process; malicious abuse of process; malicious abuse of legal process; wrongful process; wrongful process of law.

Words and Phrases (West Publishing Co., Vol. 1) at Page 355

Abuse of Process: The gist of an action for "abuse of process" is the use of court process for purpose not justified by the law. An ulterior purpose and a willful act in use of process not proper in the regular conduct of proceedings are essential elements of "abuse of process".

Jowitt's Dictionary of Law (John Burke, Vol. 1) at Page 16

Abuse of Process: Actions manifestly frivolous or brought against good faith will be stayed as an abuse of the process of the court (Edmunds v. Att.-Gen. (1878) 47 L.J.Ch. 345). Under R.S.C., Ord. 18, r. 19, the court may order to be struck out or amended any pleading or the indorsement of any writ on the ground that it discloses no reasonable cause of action or defence or is scandalous, vexatious or may prejudice a fair trial or is otherwise an abuse of the process of the court and may order the action to be stayed or dismissed or judgment entered accordingly. The rule applies to an originating summons or petition.

Aiyar's Judicial Dictionary (1988, 10th Edition) at Page 10

Abuse of Process: Improper use of a regular legal process by which an unfair advantage is obtained by a party to a suit.

Law Lexicon with Legal Maxims (M.C.Desai, J. Vol. 1) at Page 17)

Abuse of the process of the Court: Abusing the process of the Court is a term generally applied to proceeding which is wanting in bona fides and is frivolous, vexatious, or oppressive. Making use of the

process of the Court as a device to help the jurisdiction of a Civil Court has been held to amount to an abuse of the process of the Court.

8. The Illegal Dispossession Act, 2005, is meant to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by the property grabbers. According to Section 3 of this Act, no one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property and in case of contravention, the punishment is provided under subsections 2 and 3, as the case may be. Whereas, under Section 5 of the Act, it is provided that 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, and on taking cognizance of a case, the Court shall proceed with the trial from day to day and shall decide the case within sixty days and for any delay, sufficient reasons shall be recorded, with a further rider that on conclusion of the trial, if the complaint is found to be false, frivolous or vexatious, the Court may award compensatory cost to the person complained against which may extend to five hundred thousand rupees.

9. The quashment petition was filed with certain grounds to be considered by the learned High Court that whether there is any *prima facie* case of quashment of proceedings initiated on the basis of the complaint filed under Section 3 of the Act, but without advertent to the grounds, the learned High Court passed the Order as under:-

“Learned counsel has been unable to satisfy me as to how this application is maintainable when the learned trial court has already taken the cognizance as far back 15.12.2021.

In view of the forgoing, this Crl. Misc. application stands dismissed along with pending application.”

10. It reflects from the impugned Order that the main reason for dismissing the quashment petition was that the learned Trial Court has already taken cognizance on 15.12.2021, and no other reason

has been assigned. It is quite common that sometimes, a quashment petition is filed after availing the remedy provided under Section 249-A or 265-K, Cr.P.C., as the case may be, and other times, it is directly filed in an extreme or extraordinary circumstance to demonstrate an apparent and perceptible abuse of process that does not warrant or justify initiating legal proceedings. It is not the case that the petition was rejected due to the non-availing of an alternate remedy by the petitioner as provided under Section 265-K Cr.P.C, but the only reason was that the Trial Court has taken cognizance which, in our view, is neither a lawful justification nor is it persuasive enough to dismiss the petition summarily without considering the grounds raised for the culmination of proceedings in the petition moved under Section 561-A, Cr.P.C., as to whether any *prima facie* case is made out which actually warrants the prevention of the abuse of process, or otherwise, to secure the ends of justice.

11. In view of the above discussion, this Criminal Petition is converted into an appeal and allowed and as a consequence thereof, the impugned Order of the learned High Court is set aside and the matter is remanded back to the High Court so that the CrI. Misc. Application No.94/2022 is decided afresh after issuing notice to the parties.

Judge

Judge

Karachi

15.10.2024

Khalid

Approved for reporting