

Aurangzaib Alamgir v. Muhammad Sajid and others

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Court: Supreme Court of Pakistan

Case: Criminal Petition No. 58-K of 2023

Citation: 2024 SCP 419; PLD 2025 SC 53

Decision date: 15 October 2024

Bench: Muhammad Ali Mazhar and Irfan Saadat Khan, JJ.

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Publication note

The official court URL is recorded above. It could not be fetched from the publication environment on 28 July 2026. This PDF is therefore labelled as a reference copy, not as the official court PDF. The attached legal analysis identifies this limitation separately.

Appearances

Shoaib M. Ashraf, Advocate Supreme Court; Mrs. Abida Parveen Channar, Advocate-on-Record; and Ameerudin, Advocate Supreme Court assisted by Dr. Muhammad Shahrukh, Advocate High Court, appeared for the petitioners. No one appeared for respondents No. 1 and 2. Saleem Akhtar, Additional Prosecutor General, appeared for respondent No. 3.

JUDGMENT

1.

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 of 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 and 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 three 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 CrI. Misc. Application was filed in the High Court on 01.02.2022, just after two 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 learned 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 v. 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 be. 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 Cr.P.C., 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., in Chapter XXIIA has vested in the Court the power 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 *Canadian Union of Public Employees v. 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. The judgment further refers to *R. v. Power*, [1994] 1 S.C.R. 601, *R. v. Conway*, [1989] 1 S.C.R. 1659, and *R. v. Scott*, [1990] 3 S.C.R. 979. It records that abuse of process may be established where proceedings are oppressive or vexatious and violate the fundamental principles of justice underlying the community's sense of fair play and decency. The judgment also reproduces definitions from *Black's Law Dictionary*, *Words and Phrases*, *Jowitt's Dictionary of Law*, *Aiyar's Judicial Dictionary*, and *Law Lexicon with Legal Maxims*. In substance, those definitions describe improper use of a regular court process to obtain an unlawful, ulterior, frivolous, vexatious, oppressive, or unfair result.

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 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 foregoing, this CrI. 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 of 2022 is decided afresh

after issuing notice to the parties.

Result

Case remanded. The Criminal Petition was converted into an appeal and allowed. The High Court was directed to decide the quashment application afresh after notice to the parties.

Authorities referred to in the judgment

Shahnaz Begum v. the Hon'ble Judges of the High Court of Sindh and Balochistan and another, PLD 1971 SC 677; Canadian Union of Public Employees v. City of Toronto, 2003 SCC 63; sections 249-A, 265-K and 561-A of the Code of Criminal Procedure, 1898; and sections 3 and 5 of the Illegal Dispossession Act, 2005.