

HIGH COURT OF AZAD JAMMU AND KASHMIR

Cr. Appeal No.66/2021.

Date of Institution 22.10.2021.

Date of Decision 14.06.2022.

Iffat Bibi D/O Muhammad Usman Shah (late), w/o Syed Yousaf Ali Gillani, R/O village Rawani, Tehsil & District Muzaffarabad, through Attorney, Syed Yousaf Ali Gillani (Husband).

Appellant.

VERSUS

1. Zaheer Ahmad Gillani.
2. Iyaz Ali Gillani, Sons of Muhammad Usman Shah (Late), R/O Bandi-Meer-Samdani, Tehsil & District Muzaffarabad.

Respondents.

**APPEAL UNDER SECTION 203-J, CR.P.C AGAINST
IMPUGNED ORDER OF ADDITIONAL DISTRICT &
SESSIONS JUDGE, MUZAFFARABAD,
DATED 24.09.2021.**

BEFORE:- Justice Sardar Liaqat Hussain, J.

PRESENT:

Syed Asad Ali Kazmi, Advocate, for Appellant.

Mr. Manzoor Hussain Raja, Advocate for Respondents.

JUDGMENT:-

The captioned appeal has been addressed against the impugned order of Additional District and Sessions Judge, Muzaffarabad, dated 24.09.2021, whereby a complaint filed by appellant-complainant

under Sections 492-B, 492-C, 544-A, APC read with Section 203-I, was dismissed.

2. The facts forming background of the instant appeal are that complainant filed a complaint under Sections 492-B, 492-C, 544-A, APC read with Section 203-I, in the District & Sessions Court, Muzaffarabad, on 17.09.2021, stating therein that land comprising old Survey No.137, new Survey No.185, 2 Kanals & 19 Marlas, situated at village Bandi-Meer-Samdani Tehsil & District Muzaffarabad, according to the revenue record was in the ownership of appellant's and respondents' father, Muhammad Usman Shah, who died on 14.12.2020. It is further averred that appellant's father Muhammad Usman Shah (deceased) being lawful owner of the aforesaid land, after due course of law transferred 01 Kanal land in favour of complainant-appellant through registered gift-deed dated 19.05.2001 and possession of the same land was delivered

to her after proper identification. It is further averred that in year 2005, complainant-appellant wanted to build a house upon the aforesaid land, i.e. 01 Kanal, and for the purpose she applied for the sanction of Map and NOC for construction, which was duly sanctioned and granted by the Municipal Corporation Muzaffarabad vide bearing No.MCM/3397-98 dated 20.07.2005, and after approval of Map and issuance of NOC, construction work was started on the site and walls were arrayed and other construction material was purchased but due to terrible and disastrous earthquake of 8th October, 2005, the built structure demolished and after that she did not construct anything on the spot. It is further averred that respondent No.1 is signatory of the gift-deed and complainant being a Muslim is Parda-Nasheen lady; therefore, respondent No.1, being her real brother, appeared on her

behalf alongwith her father in the process of writing gift-deed as well as in the process of registration of the said gift-deed, before Sub-Registrar Muzaffarabad on 19.05.2001; therefore, respondents were fully aware of the truthfulness and execution of the above stated gift-deed and after execution of the gift-deed dated 19.05.2001, complainant-appellant had enjoyed peaceful possession over the gifted land till the death of her father, Muhammad Usman Shah, who had been looking after the said gifted land because she, due to marriage, was settled in village Rawani alongwith her husband. It is further stated that mutation of the said gift-deed dated 19.05.2001 is yet not attested in the revenue record, however, she had applied for the mutation before relevant forum and proceedings are pending due to illegal hurdles created by respondent No.1. It is also stated that soon after

death of appellant's father, respondent No.1 started interference in the peaceful possession of the complainant for his ulterior motives, however, complainant herself and through other respectable family members asked respondent No.1 to stop interference in the gifted land of complainant, due to which, he stopped his illegal activities, but later on he started construction over the gifted land alongwith the help of respondent No.2, after which complainant filed a civil suit in the Court of competent jurisdiction of perpetual and mandatory nature, against respondent No.1 and obtained status-quo order dated 26.01.2021, which was duly communicated to respondent No.1, but he did not give respect and due diligence to the status-quo order of the Civil Judge Court No.1, Muzaffarabad, and continued interference, on account of which, appellant-complainant also filed an application

against respondent No.1 due to breach of the aforesaid status-quo order, but respondent No.1 with the help of respondent No.2, in reaction of the civil litigation, grabbed the aforesaid gifted land from complainant-appellant and fully obtained control over the gifted land, against the valuable propriety rights of complainant. It is further averred that respondents illegally, unlawfully and willfully grabbed the property of complainant while according to the gift-deed dated 19.05.2001, she is lawful owner of the gifted land, due to which, respondents are liable to be treated and punished in accordance with prevailing law. It is maintained that complainant is also entitled to the cost bearing on the instant complaint and compensation for suffering mental torture and infringement of valuable propriety rights of complainant and delivery of possession of the aforesaid gifted land. It is prayed

that by accepting the complaint, the proceedings under Sections 492-B, 492-C, APC and Section 203-I, Cr.P.C, may be initiated against the respondents and be punished in accordance with law. It is further prayed that possession of the aforesaid gifted land be delivered to the complainant under Section 203-I, Cr.P.C and compensation may also be given to her under Section 544-A, APC for bearing expenses on the instant case as well for suffering mental agony suffered by complainant during the course of trial. The aforesaid complaint was made over to the Additional District & Sessions Judge, Muzaffarabad, 17.09.2021, whereby the aforesaid Court dismissed the complaint vide the impugned order dated 24.09.2021, hence, the instant appeal.

3. Syed Asad Ali Kazmi, the learned Counsel for appellant, contended that his client Iffat Bibi, complainant, filed a complaint against respondents under

Section 492-B, 492-C, 544-A, APC read with Section 203-I, before District & Sessions Judge, Muzaffarabad, on 17.09.2021, on the ground that land comprising past Survey No.137, present 185, 2 Kanals & 19 Marlas, situated at village Bandi-Meer-Samdani Tehsil & District Muzaffarabad, according to the revenue record, was in the ownership of appellant's and respondents' father, Muhammad Usman Shah, who being a lawful owner of the aforesaid land, after due course of law, transferred 01 Kanal land in favour of appellant through registered gift-deed dated 19.05.2001 and possession of the same land was delivered to her after proper identification and thereafter in year 2005 appellant applied for obtaining Map and NOC for the purpose of construction, which was duly sanctioned and granted by the Municipal Corporation Muzaffarabad vide bearing No.MCM/3397-98 dated 20.07.2005, and

after approval of Map and issuance of NOC for construction, work was started on the site and walls were erect arrayed and other construction material was purchased but due to earthquake disaster of 8th October, 2005, the built structure demolished. The learned Counsel emphasized that appellant-complainant being a Muslim is Parada-Nasheen lady; therefore, respondent No.1, being her real brother, appeared on her behalf alongwith her father in the process of writing gift-deed as well as in the process of registration of the said gift-deed, before Sub-Registrar Muzaffarabad on 19.05.2001 and he is signatory of the said gift-deed; therefore, respondents were fully aware of the truthfulness and execution of the above stated gift-deed. The learned Counsel further contended that mutation of the said gift-deed dated 19.05.2001 has not yet been attested in the revenue record, however, his client

had applied for the mutation before relevant forum and proceedings are pending due to illegal hurdles created by respondent No.1. The learned Counsel pointed out that soon after the death of appellant's father on 14.12.2020, respondent No.1 started interference in the peaceful possession of the complainant for his ulterior motives, however, complainant herself and through other respectable family members asked respondent No.1 to stop interference in the gifted land of complainant, due to which, he stopped his illegal activities, but later on he started construction over the gifted land alongwith the help of respondent No.2, after which complainant filed a civil suit in the Court of competent jurisdiction against respondent No.1 and obtained status-quo order dated 26.01.2021, which was duly communicated to respondent No.1, but he did not give any respect to the status-quo order of

the Civil Judge Court No.1, Muzaffarabad, and continued interference, on account of which, appellant-complainant also filed an application against respondent No.1 due to breach of the aforesaid status-quo order, but respondent No.1 with the help of respondent No.2, in reaction of the civil litigation, grabbed the aforesaid gifted land from appellant and fully obtained control over the gifted land, against the valuable propriety rights of complainant; hence, respondents illegally, unlawfully and willfully grabbed the property of complainant while according to the gift-deed dated 19.05.2001, she is lawful owner of the gifted land. The learned Counsel agitated that on the basis of aforesaid ground he filed complainant before District & Sessions Judge, Muzaffarabad, which was made over to Additional District & Sessions Judge, Muzaffarabad, whereby the Court below wrongly dismissed the

complaint. The learned Counsel prayed that by accepting the instant appeal, the impugned judgment may be set-aside. The learned Counsel in support of his arguments placed reliance upon **2016 SCMR 1931**.

4. Mr. Manzoor Hussain Raja, the learned Counsel for respondents controverted arguments of the learned Counsel for appellant and stated that the learned Court below appreciated the whole controversy in its true perspective and reached at correct conclusion, because appellant did not produce any record before the Court below. The learned Counsel further stated that the appellant filed a frivolous and baseless complaint before the Court below which was rightly dismissed by the said Court because gift-deed was stated to be written on 19.05.2001 and Muhammad Usman Shah, father of the parties, died on 14.12.2020; hence, after approximately 21

years the said gift-deed was presented before Patwari and also filed suit mutation, which is still subjudice before Civil Court, Muzaffarabad. The learned Counsel further stated that disputed land was in possession of the father of the parties whereas according to the report of Patwari, appellant has no possession of the aforesaid land. The learned Counsel contended that parties are litigant before Civil Court and in presence of pendency of civil suit, the criminal complaint could not be filed; therefore, the same was rightly dismissed by the Court below. The learned Counsel finally craved for dismissal of appeal and placed reliance upon **PLD 2008 Lahore 59** in support of his arguments.

5. I have given my dispassionate thought to the arguments of the learned Advocates for parties and gone through the record of the case.

6. At the very outset, it would be noteworthy to observe here that Criminal Law (Fifth Amendment) Act, 2020, has been promulgated in Azad Jammu and Kashmir to discourage the land grabbers and to protect the right of owner and lawful occupant of the property as against the unauthorized and illegal occupants. Moreover, the purpose of the said Act is to protect the right of possession of lawful owner or occupier and not to perpetuate the possession of illegal occupants. For the purpose of elucidation, I would like here to reproduce Section 492-B, APC adopted through Criminal Law Fifth Amendment Act, 2020, as under:-

492-B. Prohibition of Grabbing of Property, etc.- (1) 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 Owner or Occupier of such property.

(2) Whoever holds a property under a lawful authority or occupies it lawfully in pursuance of provision of law, or a lawful order or a decree of a Court or an agreement, for a period of time specified or agreed upon as the case may be, on expiration of such period, as aforesaid, he shall be liable to surrender such property to such person who is entitled for the possession thereof.

(3) Whoever contravenes the provisions of the sub-section (1) or (2) shall, without prejudice to any punishment to which he may be liable under any other law for the time being in force, be punished with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provision of Section 544-A of the Code."

It reveals that the provisions of the aforesaid sub-section (1) of section 492-B,APC are in the form of preventive provisions. The Section begins with the words "No one shall", which is a prohibitory mandate and there is no restriction as to the class of persons. Moreover, the general term "whoever" for the offenders has been used and such general term clearly indicates that the

widest possible meaning was attributed to the offenders.

7. A perusal of record reveals that Iffat Bibi, appellant-complainant, who is real sister of respondents, filed a complaint against respondents under Sections 492-B, 492-C, 544-A, APC read with Section 203-I, in the Court of District & Sessions Judge, Muzaffarabad, on 17.09.2021, which was entrusted to the Additional District & Sessions Judge, Muzaffarabad, on the same day. The complaint was filed mainly on the ground that Muhammad Usman Shah (deceased) father of appellant, gifted 01 kanal land to her through gift-deed dated 19.05.2001, from the land old Survey No.137, new Survey No.185, situated at village Bandi-Meer-Samdani Tehsil & District, Muzaffarabad, and possession was handed over to her; however, her father had been looking after the aforesaid piece of land because due to

marriage she was settled in village Rawani, however, in year 2005 she made some construction over there but due to earthquake of 8th October, 2005, the same had demolished. The complainant emphasized on the point that her brother Zaheer Ahmad Gillani, respondent No.1, is signatory of the aforesaid gift-deed because appellant being 'Pardanasheen' did not appear in the process of writing and registration of the aforesaid gift-deed rather his brother, respondent No.1, appeared on her behalf, but after death of her father, respondent No.1 dispossessed the appellant by starting construction upon the said piece of land due to which parties are litigant before civil Court and proceedings of mutation of the said land is under process; hence, a criminal complaint was also filed before the Court below, which was dismissed vide the impugned order dated 24.09.2021. The Additional District &

Sessions Judge, Muzaffarabad, dismissed the complaint on account of three main reasons that (i) mutation of the gift-deed has not been sanctioned and registered in revenue record, (ii) necessary ingredient i.e. ownership or possession is not present and (iii) that dispute between parties is of civil nature and parties are already under litigation before competent forum. The learned Court below while relying upon case law i.e. 2010 CLR Lahore 586 and PLD 2008 Lahore 59, dismissed the complaint due to pendency of civil suit before Civil Court and declared that side by side civil and criminal proceedings are not applicable in the instant case and observed that complainant can initiate contempt proceedings against respondents before civil Court if they have any nexus with the allegation and while declaring the complaint not proceedable, the same

was dismissed, vide the impugned judgment dated 24.09.2021.

8. Now, the question emerges whether in light of above narrated facts, the complaint was not proceedable and whether proper procedure for its disposal was adopted or not? A perusal of the Criminal Law (Fifth Amendment) Act, 2020, reveals that Sections 492-A, 492-B and 492-C, through a new "*CHAPTER XIX-A OFFENCES RELATING TO PROPERTY GRABBING*", have been added in the Azad Penal Code, 1860 (Act XLV of 1860) and Sections 203-D, 203-E, 203-F, 203-G, 203-H, 203-I and 203-J have been added in the Code of Criminal Procedure, 1898 (Act V of 1898) through a new "*CHAPTER XVI-A OF OFFENCES RELATING TO PROPERTY GRABBING*". Section 203-E, Cr.P.C relates to "**Cognizance of Offence**", according to which the offences under Chapter XIX-A of the Azad Penal Code, 1860 (Act XLV of 1860) shall be triable by the Court of Sessions on a

complaint, whereas Section 203-F, Cr.P.C relates to "**Investigation and Procedure**" and I deem it necessary to reproduce Section 203-F, Cr.P.C in order to clarify the position as to whether in the case in hand proper procedure was adopted or not? Section 203-F, Cr.P.C is reproduced as under:-

"203-F. Investigation and Procedure.- (1) Upon a complaint, the Court may direct the Officer-Incharge of a Police Station **to investigate** and complete the investigation and forward the same within a period fifteen days to the Court:

Provided that the Court may extend the time in case where sufficient reasons are shown for not doing so within the time specified in this sub-section but not more than thirty days:

Provided further that whenever a **local inquiry** is necessary for the purpose of this Act, the Court may direct a **Magistrate** or a **Revenue Officer** in the District to make inquiry and submit its report within a specified period as the Court may direct and the report of Magistrate or Revenue Officer, as the case may be, **shall be construed as evidence in the case.**

(2) On taking cognizance of a case, the Court shall proceed with the trial on day to day basis and shall decide the case within a period of sixty days and if any delay occurred due to any unavoidable circumstances, which is beyond human control, the Court shall record the sufficient reason thereto.

(3) The Court shall not adjourn the trial, unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment shall be extended or allowed beyond seven days.

(4) If the Court reaches at the conclusion after conducting the trial that complaint is frivolous, false or vexatious, the Court may award compensatory cost upon the complainant which may extend to five hundred thousand rupees."

A bare reading of the aforesaid section 203-F, Cr.P.C makes it abundantly clear that when a complaint is moved before the Court of Sessions, the Court before taking cognizance of a case has two options, first is that, the Court **may direct** the Officer-In-charge of a Police Station **to investigate** and complete the investigation and forward the same within

a period of fifteen days to the Court, and the Court may extend the time in case where sufficient reasons are shown for not doing so within the time specified in this sub-section but not more than thirty days, and second is that, whenever a **local inquiry** is necessary for the purpose of this Act, the Court **may direct** a **Magistrate** or a **Revenue Officer** in the District to make inquiry and submit its report within a specified period as the Court may direct and the report of Magistrate or Revenue Officer, as the case may be, shall be construed as evidence in the case, and thereafter, as provided under Section 203-F(2), Cr.P.C, the Court by taking cognizance of a case shall proceed with the trial on day to day basis and shall decide the case within a period of sixty days and if the Court, as provided under section 203-F(4), Cr.P.C, reaches at the conclusion after conducting the trial that complaint

is frivolous, false or vexatious, the Court may award compensatory cost upon the complainant which may extend to five hundred thousand rupees and if otherwise the Court arrives at the conclusion that case against accused has been proved, then it shall award him punishment under sections 492-B and 492-C, APC and shall proceed under section 203-I, Cr.P.C for delivery of possession of the property to its owner.

9. In the case in hand, the claim of Iffat Bibi, appellant-complainant, who is real sister of respondents, is that her father Muhammad Usman Shah (deceased) gifted 01 kanal land to her through gift-deed dated 19.05.2001, from the land old Survey No.137, new Survey No.185, situated at village Bandi-Meer-Samdani Tehsil & District, Muzaffarabad, and possession was handed over to her; however, her father had been looking after the aforesaid piece of land because

due to marriage she was settled in village Rawani, and her brother Zaheer Ahmad Gillani, respondent No.1, is signatory of the aforesaid gift-deed because appellant being 'Pardanasheen' did not appear in the process of writing and registration of the aforesaid gift-deed rather his brother, respondent No.1, appeared on her behalf, but after death of her father, respondent No.1 dispossessed the appellant by starting construction upon the said piece of land due to which parties are litigant before civil Court and proceedings of mutation of the said land is under process. From the aforesaid claim of appellant, it is an admitted fact that mutation proceeding of the said land is under process; however, an important aspect of the matter in hand is that Zaheer Ahmad Gillani, respondent No.1, is stated to be signatory of the aforesaid registered gift-deed dated 19.05.2001, but this

vital factum was not considered by the Court below while dismissing the complaint, rather in my opinion, before dismissal of complaint on merit by the trial Court, the matter was to be investigated or inquired by adopting proper procedure provided under Section 203-F,Cr.P.C, which postulates that a Magistrate or a Revenue Officer should have been appointed to make inquiry and it has clearly been mentioned in the aforesaid provision of law that **"the report of Magistrate or Revenue Officer, as the case may be, shall be construed as evidence in the case"**, but in the case in hand, the aforesaid report has not been obtained; therefore, in my view, after adopting proper procedure, as given in section 203-F,Cr.P.C, it was incumbent upon the Court below to commence trial by taking cognizance of the case on day to day basis and decide the same within a period of sixty days as provided in

Section 203-F(2), Cr.P.C, instead of dismissing the complaint in limine through the impugned order dated 24.09.2021. In such state of affairs, I have arrived at the conclusion that neither proper procedure for conducting inquiry in the instant case/complaint has been adopted nor the impugned order dated 24.09.2021 has been recorded according to the procedure provided under the provisions of section 203-F, Cr.P.C. Therefore, finding force in the instant appeal, the impugned order dated 24.09.2021 is liable to be set-aside.

10. As far as observation made by the Court below in the impugned order that dispute between parties is of civil nature and parties are already under litigation before competent forum and complainant in the existing position of affairs might have some right enforceable through civil Court but he has no right to put the criminal in motion, is

concerned. Suffice to say that a principle has been laid down in a case titled **Shaikh Muhammad Naseem v. Mst. Farida Gul [2016 SCMR 1931)** that an Act which entails civil liability under civil law as well as criminal penalty under criminal law, then a person can be tried under both kinds of proceedings which are independent to each other. The relevant caption of the aforesaid judgment of the Apex Court of Pakistan is as under:-

"In the impugned judgment it was also held that where civil litigation with regard to illegal dispossession from immovable property is pending between the parties, the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained. This finding is also based on the decision of the Lahore High Court in Zahoor Ahmad's case (PLD 2007 Lahore 231), reasoning of which was adopted by three members bench of this Court in Bashir Ahmad's case (PLD 2010 SC 551). We are of the view that such a finding is also not sustainable in law. Any act which entails civil liability under civil law as well as criminal penalty under

criminal law, such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent of each other."

Therefore, the aforesaid ground of civil litigation between the parties, narrated by Court below in the impugned order, could not be made basis for dismissal of complaint, hence, the impugned order to this extent is also not maintainable.

11. The crux of above discussion is that by accepting the instant appeal, the impugned order dated 24.09.2021 is set-aside and the matter is remanded to the Additional District & Sessions Judge, Muzaffarabad, with the direction that after adopting proper procedure for making an inquiry upon the complaint, given in section 203-F(1), Cr.P.C [Criminal Law (Fifth Amendment) Act, 2020], the same shall be decided on merits including the following points:-

- i. Whether respondent No.1, Zahoor Ahmad Gillani, is signatory of the registered gift-deed dated 19.05.2001 or not?
- ii. Whether the complainant is actual owner (or occupier i.e. in lawful possession) of the immovable property in question or the complainant is not the actual owner of the property?
- iii. Whether the accused has grabbed property and entered into (or upon) the said property?
- iv. Whether the entry of the accused into (or upon) the said property is without any lawful authority or the accused has the lawful authority to enter into the property?
- v. Whether the accused has done so with the intention to dispossess (to grab or to control or to occupy) the complainant or the entry of the accused into the property is not to dispossess the complainant?

A copy of the instant order shall be sent to the trial Court for compliance.

Muzaffarabad,
14.06.2022.

-Sd-
JUDGE

Approved for reporting.

-Sd-
JUDGE