Form No: HCJD/C-121

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Writ Petition No. 2587 of 2021

Ibrahim Shahid Minhas

Versus

Major (R) Muhammad Amin Minhas and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(01)	16.07.2021	Mr. Muhammad Shahzad Siddiq, Advocate for the petitioner.

The petitioner has called in question order dated 24.06.2021 passed by learned Sessions Judge-West, Islamabad.

02. Brief facts of the case are that the complaint filed by the respondent No. 1 against the petitioner and others under Illegal Dispossession Act, 2005 was dismissed summarily vide order dated 07.02.2020. Thereafter, respondent No. 1 challenged the dismissal order before this Court in a writ petition No. 757/2020, whereby the writ petition was allowed, impugned order dated 07.02.2020 was

setaside and the matter was remanded to the learned trial Court for decision afresh after conducting inquiry. Intra Court Appeal against the said order was also dismissed by the Division Bench of this Court vide order dated 24.03.2021. After remanding the case from this Court, the learned Sessions Judge on the basis of inquiry report submitted by police and other material available on record, held that there is sufficient material available to proceed with the complaint. Hence, passed an order that the complaint is maintainable and shall proceed further as per law / procedure. The petitioner along with five others was directed to submit bail bonds of Rs. 50,000/- each with one surety each and the case was adjourned for conducting the trial.

03. Learned counsel for the petitioner *inter alia* contends that the impugned order is illegal and unjust; petitioner is innocent and has got no concern whatsoever with the commission of

offence; even in all the police reports and the inquiry it has never been alleged that the petitioner was present on the alleged dates of incident in Pakistan or having any role in it; there is no evidence available on record regarding involvement of the petitioner and has prayed for setting aside of the order dated 24.06.2021 and dismissal of complaint under Section 3, 4 and 8 of the Illegal Dispossession Act, 2005 filed by respondent No. 1 against the petitioner being illegal, unlawful, unprecedented.

04. Arguments heard, record perused.

05. As the learned Sessions Judge-West, Islamabad has proceeded in the matter after remanding the case by this Court vide order dated 25.09.2020 passed by learned Single Judge-in-Chambers which was upheld by the Hon'ble Division Bench of this Court vide order dated 24.03.2021, wherein learned trial Court was directed to decide the matter afresh

after conducting inquiry as envisaged in Illegal Dispossession Act, 2005.

06. The petitioner may avail alternate remedy to file a petition under Section 265-k Cr.P.C or other provisions under the law for his acquittal in the Court of competent jurisdiction. Guidance in this respect is taken from the law laid down by the Hon'ble Supreme Court of Pakistan.

i. In a case titled as ***"Director General, Anti-Corruption Establishment, Lahore and others Vs. Muhammad Akram Khan and others" (PLD 2013 SC 401)***, it is held that:-

> ***"The law is quite settled by now that after taking of cognizance of a case by a trial court the FIR registered in that case cannot be quashed and the fate of the case and of the accused persons challenged therein is to be determined by the trial court itself. It goes without saying that if after***

taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under sections 249-A/265-K, Cr.P.C to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction."

ii. In a case titled as ***"Mst. Kaniz Fatima Vs. Muhammad Salim" (2001 SCMR 1493),*** it is held that:-

"where a particular statute provides a self-contained machinery for the determination of questions arising under the Act and where law provides a remedy by appeal or revision to another Tribunal fully competent to give any relief any indulgence to the contrary by the High Court is bound to produce a sense of distrust in statutory

Tribunals and constitution petition without exhausting remedy provided by the statute would not lie in the circumstances".

iii. In a case titled as ***"Muhammad Abbasi Vs. S.H.O. Bhara Kahu and 7 others" (PLD 2010 Supreme Court 969),*** it is held that:

"In our view where alternate remedy is more convenient, beneficial and likely to set the controversy at naught completely, jurisdiction under Article 199 cannot be exercised".

iv. In a case titled as ***"Rana Aftab Ahmad Khan Vs. Muhammad Ajmal and another" (PLD 2010 Supreme Court 1066)***, it is held that:-

"we have considered the above and are constrained to hold that the constitutional jurisdiction (reference Article 199) of the High Court in all the cases cannot be invoked as a matter of right, course or

routine, rather such jurisdiction has certain circumventions which the Court is required to keep in view while exercising the extraordinary discretionary power".

07. In view of above discussion, the instant petition is not maintainable and **dismissed in limine** being meritless.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-