ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Revision No. 56 of 2022

Ch. Muhammad Jahangir

Versus

Qazi Bashir, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	28.07.2022	Mr. Arif Khan, Advocate for petitioner.

The instant revision petition is arising out of order dated 04.07.2022, passed by the Additional Session Judge-IX, Islamabad, whereby application under 265-K Cr.P.C filed by the petitioner was dismissed.

2- Relevant facts are that the respondent filed complaint under Section 3 & 4 of the illegal dispossession Act, 2005 against the petitioner with the allegation of taking over illegal possession of his land measuring 01-Kanal, 17-Marla. Khasra No. 1687, situated in revenue state of Sheikh Pur, Tehsil and District, Islamabad **(the property).**

4. The learned trial Court then procure report from the concerned SHO and before admitting the complaint for regular hearing, opted to summon the petitioner at the first instance, who was then afforded opportunity to produce documents of ownership with respect to the property but the same could not be produced consequently, the complaint was admitted for regular hearing. At this stage, petitioner filed application under section 265-k Cr.P.C for his acquittal but it was dismissed by the learned trial Court vide impugned order dated 04.07.2022, hence instant revision petition.

5. Learned counsel argued that the petitioner and his son also retain property in the disputed Khasra number; that earlier the respondent attempted to lodge an FIR on the same set of allegations but remained unsuccessful and his petition under section 22-A & B Cr.P.C and writ petition were also dismissed with observation that the matter is one of civil dispute; that the title documents are with the petitioner and that further proceedings would be abuse of process of law.

6. Heard, record perused.

7. The documents annexed with the petition reveal that before admitting the complaint for regular hearing, the petitioner was afforded opportunity to come up with proof of ownership in Khasra No. 1687 and on his failure, the learned trial Court after evaluating the police report and documents, proceeded to admit the complaint.

8. It is significant to note that by that time the petitioner has failed to produce the documents so requisitioned by the learned trial Court. This aspect was also acknowledged in Para iii) of "**GROUNDS**" of the memo of instant petition, in terms that ***"on the failure of the appellants counsel to submit the title document of Khasra No. 1687 which has now been submitted hence the only ground is already obliterated. Even otherwise the same negates the cautious use of discretion by the learned trial Court."***

9. To respond to the ground mentioned above, perusal of the impugned order indicates that it was not the case as the learned counsel tried to portray as it was not the sole ground to admit the complaint for regular hearing rather after failure of the petitioner to produce the proof of ownership, the next step which the learned trial Court had taken was of hearing the arguments and then admitted the complaint after

considering the allegations leveled in the complaint and after perusal of the police report.

10. The next reason for discarding the above ground is that failure of the petitioner to submit the documents, so requisitioned, and to consider the same in revisional jurisdiction by stepping into the shoes of the trial Court would not only amount to regulate proceedings but would also be to undermine the authority vested in the trial Court by accepting the request of the petitioner that he was not having the documents at the relevant time and that same may now be considered in revision petition by adjudging the veracity of the impugned order. The due process of law is not meant to use as a device for getting favorable orders by employing method of one's own choice. If the said practice is allowed to prevail, it will not only be harmful for the due process but will also open a floodgate of such like matters, where the party, by deliberately or otherwise, withholds the document and then came up with the same before this Court with the ground that it was the sole ground for admission of the complaint and press to knockout the exercise of authority by a court of competent jurisdiction.

11. It is also noticed that even before admitting the complaint for regular hearing, the petitioner was provided opportunity for more than once to make good the deficiency and was also given due audience on the points on the basis of which he subsequently, soon after admission of the complaint, filed the application under Section 265-K Cr.P.C before any material or even remote progress.

12. If the contention of the learned counsel contained in ground iii) ibid for the sake of argument presumed correct, even in that eventuality proper course for the petitioner is to present the same before the Court, seized with the trial of the subject complaint rather than to bypass it and to make a ground to get nullify the impugned order.

13. Suffice it to say, this Court is not inclined to put the respondent under notice and to proceed further with the instant revision petition, which is accordingly dismissed in limine with observation that in case of any fresh material, proper course for the petitioner would be to move the learned trial Court.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//