JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

CRIMINAL REVISION NO.08 OF 2025

AZIZ UR REHMAN

VS

THE STATE, ETC.

Petitioner by	**:**	**Mr. Sohail Ikram and Mr. Husnain Sohail, Advocates.**
Respondents by	**:**	**Raja Muhammad Mehtab Advocate for the Respondent No.7.** **Rana Hassan Abbas, learned ADPP for the State.** **Mr. Asif Riaz S.I, P.S Khanna.**
Date of hearing	**:**	**25.06.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Criminal Revision Petition under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 **("Cr.P.C")**, Aziz Ur Rehman **("**Petitioner/Complainant**")** has assailed the Order dated 09.12.2024 **("**Impugned Order**")** passed by learned Additional Sessions Judge, Islamabad-East **("Trial Court")** whereby the complaint under Sections 3 & 4 of the Illegal Dispossession Act, 2005, filed by the Petitioner/Complainant, has been dismissed.

2. Brief facts of the case as per the contents of the petition are that in the year 2015, the Petitioner/Complainant purchased a plot measuring 2 kanals, falling in Khasra No. 1164, Mouza Khana Kak, Tehsil & District Islamabad, from one Chaudhry Muhammad Siddique (late) son of Muhammad Ali, and possession of the said plot was also delivered to him. At the time of purchase of the said plot, two houses were already built there. Thereafter, the Petitioner/Complainant constructed a boundary wall and installed a gate. Subsequently, the Petitioner/Complainant was involved in a murder case and remained confined in jail till 2018. In the meantime, Respondents No. 2 to 9 forcibly took over the possession of the property in question and constructed a house. The Petitioner/Complainant got registered F.I.R**.** No. 156/24 under Sections 342/448/506(ii)/34 PPC against the Respondents/Accused**.** The Petitioner/Complainant also filed a complaint under Sections 3 & 4 of the Illegal Dispossession Act, 2005, against Respondents No. 2 to 9, with the prayer that

possession of the suit property may be handed over to him. The learned Trial Court, after recording the cursory statement of Petitioner/Complainant Aziz ur Rehman as CW-1, summoned a report from SHO P.S. Khanna, Islamabad. After hearing the arguments of learned counsel for the Petitioner/Complainant**,** the learned Trial Court, dismissed the complaint vide the Impugned Order. Being aggrieved by the Impugned Order, the Petitioner/Complainant has filed the instant petition.

3. The learned counsel for the Petitioner/Complainant submits that the Impugned Order, passed by the learned Trial Court, is perverse and contrary to law and facts. The Petitioner is the lawful owner of 2 kanals of land in Khasra No. 1164, as reflected in the unchallenged revenue record. The land was transferred lawfully through a chain of registered owners, and no objection was ever raised by Respondents No. 2 to 9. The report of the Tehsildar, as well as the Assistant Commissioner's order dated 24.08.2011, confirm the Petitioner's ownership and negate any claim of the private Respondents. Despite this, the Trial Court dismissed the complaint under Section 3 of the Illegal Dispossession Act, 2005, treating the matter as a civil dispute, without properly appreciating the material on record, including the police investigation and the Petitioner's/Complainant's version, which confirmed unlawful dispossession by the Respondents. It is settled law that civil and criminal proceedings can run concurrently, and summary dismissal of a criminal complaint solely on the ground of a pending civil dispute is illegal. Learned counsel placed reliance on **2016 SCMR 1931**, **2023 YLR 502 (Islamabad)** and **PLD 2024 SC 1152**. Further, it is argued that at the preliminary stage, the Petitioner was only required to establish a prima facie case, not prove the case beyond doubt. The learned Trial Court failed to recognize that ownership documents, coupled with the police report under Section 173 Cr.P.C., clearly made out a case to proceed against the Respondents. By deeply scrutinizing evidence at this premature stage, the learned Trial Court exceeded its jurisdiction. In light of the above, it is prayed that the Impugned Order be set aside and the matter remanded, with directions to the Trial Court to issue process under Section 204 Cr.P.C. against Respondents No. 2 to 9, and proceed with the trial in accordance with law.

4. On behalf of Respondent No. 7, it is argued that the Impugned Order is passed while keeping in view the facts and material available on record; that Respondent No. 7 has got no concern with the property in question, neither he is in possession of any house, nor he dispossessed the Petitioner/Complainant.

5. The rest of the Respondents were summoned through warrants but failed to appear before this Court.

6. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

7. Upon examination of the record, it is evident that the learned Trial Court did not comply with the mandatory requirement of Section 200 Cr.P.C., which mandates that the Magistrate shall record the statements of the complainant and witnesses, if any, on oath in open Court. In the instant case, a typed statement was produced before the learned Trial Court**,** which only bears the signature of **the** Petitioner/Complainant but does not contain the signature of the learned Additional Sessions Judge or stamp of the Court. The Trial Court failed to record the Petitioner's/+Complainant's statement in open Court as required under Section 200 Cr.P.C., which is an essential requirement for proceeding with the complaint.

8. The learned Trial Court, directed the SHO P.S. Khanna to submit his detailed report about the occurrence, ownership, and possession of the property in dispute, after holding a detailed inquiry and bringing on record the evidence presented by the parties. In pursuance of the direction, on 12.10.2024, a report was filed, which was vague and in violation of the relevant provisions of the Police Order, 2002, and Police Rules. The Investigating Officer of P.S. Khanna was legally bound to conduct an in-depth inquiry by associating both parties and recording their statements, as is legally done in a case initiated through First Information Report under Section 154 Cr.P.C., for the reason that a private complaint has all the characteristics of an FIR once initiated. No effort whatsoever was made by the police officials to strictly comply with the relevant provisions of law. Such a vague report was not taken notice of by the learned Trial Court, and deviation from the routine procedural requirements has rendered the Impugned Order *void ab initio*, which warrants interference in the instant Criminal Revision.

9. In view of the above, this Court finds that there are procedural irregularities which have rendered the Impugned Order null and void. Therefore, without giving any findings on the pro and contra contentions of both the parties, the instant petition is **accepted**, the Impugned Order is **set aside**, and the matter is **remanded** to the learned Trial Court with the following directions: -

a) To conduct a fresh inquiry strictly in accordance with Section 200 Cr.P.C. by recording the statements of the complainant and any witnesses on oath;

b) To summon a fresh, comprehensive, and detailed report from the police authorities for the purpose of the inquiry, determining who is in possession of the houses/property in question, both at the relevant time and at present; and

c) Thereafter, proceed further in accordance with the provisions of the Illegal Dispossession Act, 2005, and the Cr.P.C.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of July 2025.

JUDGE

Sajid/--