JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

CRL. MISC. NO. 882 OF 2025

ABID KHAN

Vs

AZHAR RABBANI AND OTHERS.

Petitioner by	**:**	**Sher Afzal Khan Marwat and Mr. Haidar Khan, Advocates.**
Respondents by	**:**	**Raja Rizwan Abbasi, Advocate.** **Mr. Usman Akbar Khan, State Counsel.** **Mr. Iftikhar A.S.I, P.S Tarnol.**
Date of hearing	**:**	**29.05.2025**

MUHAMMAD AZAM KHAN, J.

1. Objection Case No.10773/2025:

The office has raised certain objections to the filing of the instant C.M., which is reflected at Serial Nos.15, 30 and 37 of the Objection Sheet.

2. Office objections are overruled for the time being. The office is directed to number the instant C.M. and fix it before the Court today.

C.M. No.419/2025 (Additional Documents)

1. This is an application seeking placement of certain additional documents annexed with the instant CM.

2. Notice.

3. The learned counsel appearing on behalf of the Respondents, while waiving notice of the instant C.M. has raised no objection to the acceptance of the same. In view of the no objection of the learned counsel for the Respondents and for the reasons stated in the instant CM, the same is allowed.

C.M. No.420/2025 (Exemption)

Exemption sought for is allowed subject to all just and legal exceptions.

MAIN CASE (Crl. Misc. No.882 of 2025).

1. Through the instant Criminal Miscellaneous Petition filed under Section 561-A Cr.P.C, Abid Khan **("Petitioner")** has challenged the Order dated 14.04.2025

(**Impugned Order-I**) passed by learned Assistant Commissioner (Saddar)/Sub-Divisional Magistrate, ICT, Islamabad, whereby the property in dispute has been sealed until the orders and directions as to the rightful ownership and possession are issued by the Revenue Authorities or the competent Civil Court. The Petitioner has also challenged the Order dated 02.05.2025 (**Impugned Order-II**) passed by the learned Additional Sessions Judge, Islamabad-West, vide which possession of the property in dispute has been delivered to the Respondents No.1 to 7, by mentioning that civil suit between the parties is already pending before the learned Civil Court which is competent to decide the matter.

2. The brief facts leading to the filing of the present Criminal Miscellaneous Petition are that the S.H.O. P.S. Tarnol prepared Qalandra under Sections 107 and 150 Cr.P.C against the parties, contending that Muhammad Maqsood submitted a written application that on 23.10.2024 at about 08:00 p.m., 10/11 persons including Abid, Jabir, Nadir, Sajid, Aurangzeb etc., boarded in two vehicles, armed with weapons, entered into his house situated at Johd Road, Tarnol, beat his family, and extended threats regarding taking of possession and also took away cash and valuable articles with them, resulting in registration of F.I.R. No.873 under Sections 452/506(ii)/148/149 PPC at P.S. Tarnol.

3. On 06.11.2024, proceedings under Sections 107/150 Cr.P.C were initiated against the parties. On 20.11.2024, Muhammad Maqsood again submitted an application that on 19.11.2024 at about Maghrib time, Abid, Khalid, Aqib, Babar, Jabir, Qari Arshad along with 10/12 unknown persons, armed with weapons, forcibly entered into his house and tried to take possession of the said house, resulting in registration of F.I.R. No.931 under Sections 380/447/511/148/149 PPC, P.S. Tarnol.

4. On 17.02.2025, during combing search, officials of P.S. Tarnol and CTD raided a Dera situated at Johd Road. The persons present in the Dera started firing at the police party. Four persons from the Dera were arrested with weapons and F.I.R. No.152 under Sections 324/353/186/188/34 PPC & 13/20/65 A.O was registered at P.S. Tarnol.

5. Abdul Waheed submitted a written application stating that he is the owner in possession of land measuring 24 Kanals, 5 Marlas in Khewat Nos. 68, 32, 274, 58, Khasra Nos. 285, 67, 11, 584, 585, Tehsil Tarnol, Islamabad (**property in dispute**).

That on 20.11.2024 at about 08:00 a.m., Azhar Rabbani, Qaisar Rabbani and Mazhar Rabbani armed with Kalashnikovs, Wali ur Rehman armed with a G3 Gun, along with 15 unknown armed persons entered into his house, started beating his family members, fired shots, and took away valuable articles. Keeping in view the above-mentioned situation, proceedings under Sections 107/150 Cr.P.C were initiated against the parties.

6. Qalandra under Section 145 Cr.P.C dated 27.03.2025 was submitted before the Court of Assistant Commissioner/Sub-Divisional Magistrate (Saddar), Islamabad Capital Territory, Islamabad, who after hearing the parties, vide Impugned Order-I dated 14.04.2025 sealed the property in question until the orders and directions as to the rightful ownership and possession are issued by the Revenue Authorities or the competent Civil Court. Feeling aggrieved by Impugned Order-I, both parties filed their respective criminal revision petitions. Both petitions were consolidated and vide Impugned Order-II the revision petition filed by Azhar Rabbani and others was accepted, whereas the revision petition filed by the Petitioner, Abdul Waheed, was dismissed.

7. The instant Criminal Miscellaneous Petition was originally fixed for 24.06.2025, and today C.M. No.364/2025 was taken up for hearing regarding vacation of stay filed by the learned counsel on behalf of the Respondents, upon which the Petitioner's counsel stated that if the said C.M. No.364/2025 for vacation of stay is decided, it will also decide the main Criminal Miscellaneous Petition, to which both counsel agreed to argue Criminal Miscellaneous Petition No.882/2025 along with C.M. No.364/2025. The office is directed to fix the Criminal Miscellaneous Petition No. 882/2025 for today while reflecting the same in today's cause list.

8. The learned counsel for the Petitioner argued that a criminal revision is not maintainable against an interim order under Section 145(1) Cr.P.C, and the proper remedy lies under Section 145(5) Cr.P.C. It was contended that when possession is regulated under Order 39 Rule 1 CPC, criminal courts cannot override civil court orders. The Impugned Orders were passed hastily and based on conjecture, without lawful basis for granting possession to the Respondents. The Petitioner, who is lawful owner of 24 Kanals, 5 Marlas, was illegally dispossessed by the police in collusion with the qabza mafia (Respondents No.1 to 7), a fact supported by CCTV

footage and an inquiry report, both ignored by the Additional Sessions Judge (West), Islamabad. The order to de-seal the property in favour of Azhar Rabbani, who holds no ownership, was passed mechanically and is unlawful. The Respondents have no valid claim over the property, and their actions are fraudulent. The Impugned Orders are harsh, unlawful, non-speaking, and passed without proper judicial application, thus liable to be set aside. The Petitioner prays that the Impugned Orders dated 02.05.2025 and 14.04.2025 may kindly be quashed, and the matter may kindly be remanded to the Assistant Commissioner under Section 145(5) Cr.P.C, or alternatively, for possession to be restored to the Petitioner.

9. On the other hand, learned counsel for the Respondents vehemently resisted the instant petition and prayed for its dismissal on the grounds that the Impugned Order dated 02.05.2025 passed by the learned Additional Sessions Judge, Islamabad-West, is well-reasoned; that the learned Additional Sessions Judge vide Impugned Order dated 02.05.2025 rightly accepted the petition filed by the Respondents; that there is no illegality or irregularity in the Impugned Order dated 02.05.2025 and it does not call for any interference.

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

11. One Saeed Ahmed, predecessor-in-interest of the parties, was owner of the land in question. He had three daughters, namely Bhag Sultana, Bakht Noor, and Ajaib Sultana. Muhammad Maqsood etc., are the successors-in-interest of Bhag Sultana, while Abdul Waheed etc., are the successors-in-interest of Bakht Noor. Ajaib Sultana was survived by Abdul Lateef (husband), Shafique, Siddique, Rafique (sons), Nasreen, Bushra, Naheeda, Saeeda, Yasmeen (daughters). The Petitioner, Abid Khan, claimed that he purchased the property in dispute from Abdul Waheed on 23.10.2024 in Khasra Nos. 67 & 11, thus claimed to be the owner in possession. Muhammad Maqsood, the successor-in-interest of Bhag Sultana, claims ancestral ownership and possession of the dispute property. It is admitted that Mst. Bakht Noor and Bhag Sultana were co-owners and co-sharers of the property in question, from whom the parties derive their rights. It is also admitted that prior to the proceedings under Section 145 Cr.P.C, Muhammad Maqsood filed a civil suit on 09.09.2024 regarding Khasra Nos. 67 & 11, and similarly, Abdul Waheed filed a civil suit on 26.10.2024.

12. The learned Appellate Court, while deciding the criminal revisions filed by both parties against the order of the learned Magistrate/Assistant Commissioner, held that when a matter regarding disputed property is pending before the Civil Court, then proceedings under Section 145 Cr.P.C are not sustainable in the eyes of law. The proceedings under Section 145 Cr.P.C are no doubt subservient to the determination of title by the Civil Court. In the present case, the parties have already approached the Civil Court, and a status quo order has been issued; thus, the matter is to be regulated by the Civil Court and not by the Assistant Commissioner/Magistrate under Section 145 Cr.P.C. The proper course for the parties is to approach the Civil Court if any of its orders are violated. The Magistrate Court was not competent to entertain Qalandra of local police regarding breach of peace. The local police have already bound down both parties under Sections 107/151 Cr.P.C, which was the proper course to keep peace.

13. Proceedings under Section 145 Cr.P.C are to be initiated only when there is imminent/immediate apprehension of breach of peace. In the present case, both parties have filed civil suits against each other for determination of their rights. Once the Civil Court is seized of the subject matter and has issued a restraining order for status quo, the dispute falls outside the jurisdiction of a Magistrate under Section 145 Cr.P.C.

14. In case titled *Muhammad Akbar v. The State* reported as **PLD 1968 SC 281**, the august Supreme Court held:-

> *"Normally criminal proceedings should not be postponed pending the disposal of civil litigation connected with the same subject-matter. But where it is clear that criminal liability is dependent upon the result of the civil litigation or is so intimately connected with it that there is a danger of grave injustice being done in the case if there be a conflict of decision being the civil Court and the criminal Court then in such event it is equally clear that the criminal Court has not only the right to but should also stay its hands until the civil litigation is disposed of, for, it is not desirable that when the title to the property itself is in dispute, the criminal Courts should give a finding in respect of the same question."*

15. Similarly, in *Shah Muhammad v. Haq Nawaz,* **PLD 1970 SC 470**, the apex Court held that:

> *"A case in which a civil Court is already seized with the subject-matter of dispute and has passed an order regulating possession thereof or a case in*

which a decree for possession has been granted or a permanent injunction granted restraining the opposite-party from interfering with the possession of the decree-holder fall outside the jurisdiction of a Magistrate under section 145, Cr. P. C. Action can of course be taken always under sections 107 and 151 of the Criminal Procedure Code to prevent breach of peace in case of this nature, but no order for attachment of the property can be made. In the present case the appellant had filed a suit in a civil Court on the 12th September 1969, against the respondent for a declaration that he was a tenant of the disputed property and for grant of permanent injunction restraining the respondent from interfering with his possession. An ad interim injunction was granted by the Court on the 13th September' 1969, for maintaining status quo, i.e. the possession of the plaintiff was not to be disturbed. This order was in operation when the Additional District Magistrate, Gujranwala, on the 1st October 1969, passed an order under section 145(1) of the Criminal Procedure Code and directed the police to seal the disputed premises. This in effect dispossessed the appellant and thereby cancelled the order of the civil Court dated the 13th) September 1969. The order was in our view clearly illegal, no matter how wide the scope of section 145 of the Criminal Procedure Code may be."

16. The learned counsel for the Petitioner has not been able to demonstrate any legal infirmity or procedural defect in the Impugned Order dated 02.05.2025 warranting interference by this Court. In view of the precedents laid down by the august Supreme Court, the instant Criminal Miscellaneous Petition under Section 561-A Cr.P.C. is found to be misconceived and without merit, and is accordingly **dismissed**. The dispute between the parties shall be resolved by the competent Civil Court already seized of the matter.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____day of June 2025.

JUDGE

Sajid/--