



RESEARCH CENTER HIGH COURT OF BALOCHISTAN

COURT: MALIK ZIA-UR-RAHMAN AWAN, ADJ

SUBJECT: *Illegal Dispossession Act, 2005*

DATE: QUERY RECEIVING DATE: 27TH MARCH 2026

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PROPOSED QUERY

Whether a complaint under Sections 3, 4, and 8 of the *Illegal Dispossession Act, 2005*, is maintainable where civil suits between the same parties regarding the same property are already pending (*sub judice*) before the competent court, and whether any statutory limitation period is prescribed for the institution of such a complaint?

MAINTAINABILITY

A complaint under Sections 3, 4, and 8 of the *Illegal Dispossession Act, 2005* is generally maintainable notwithstanding the pendency of civil suits or appeals between the parties concerning the same property, provided the allegations disclose the ingredients of the offence of illegal dispossession as contemplated under the Act. The statute creates an independent and special criminal remedy intended to provide expeditious relief against unlawful dispossession, particularly by force, fraud, or coercion, and its operation is not barred merely because civil litigation regarding title, possession, or proprietary rights is sub judice.

The *Lahore High Court in 2008 YLR 2505 Rehan Nasir v. SHO, Police Station Rail Bazar Faisalabad*, authoritatively held that the pendency of civil proceedings does not automatically bar criminal proceedings arising out of the same transaction, and both remedies may proceed simultaneously where the allegations disclose independent criminal liability. The operative observation of the Court is as follows:

“There is no substance in the argument that criminal proceedings have to be held in abeyance in all circumstances during pendency of a civil suit... criminal proceedings were not barred in the presence of civil proceedings, and both proceedings could be carried out

simultaneously.” This principle establishes that the mere existence of civil litigation relating to property or contractual rights does not oust the jurisdiction of criminal courts where ingredients of an offence are prima facie made out.”

In *Muhammad Ramzan alias Jani v. Muhammad Aslam*, 2007 P Cr. L J 1784, the Court held that the mere pendency of a civil suit regarding declaration or possession does not bar proceedings under Sections 3, 4, and 7 of the *Illegal Dispossession Act, 2005*, and both civil and criminal remedies may be pursued simultaneously where allegations of forcible encroachment or illegal dispossession exist. The Court emphasised that the object of the Act is to provide an effective and immediate remedy against unlawful occupation, and therefore, the complainant is not required to await the outcome of civil litigation before invoking criminal jurisdiction.

The operative observation of the court is as follows;

“There is no bar that any party may choose to file civil suit or criminal proceedings, but as per law, both the remedies can be availed by the applicant... Mere pendency of the civil suit regarding declaration does not mean that the applicant cannot avail other efficacious remedy by approaching the Court having jurisdiction.”

Thus, the principle emerging from this judgment is that simultaneous civil and criminal proceedings under the *Illegal Dispossession Act, 2005*, are maintainable, particularly where illegal encroachment or forcible possession is alleged, and pendency of a declaratory civil suit does not oust the jurisdiction of the Sessions Court under the Act.

LIMITATION:

The settled position of criminal law is that no statutory period of limitation is prescribed for the institution of a private complaint, and therefore, a complaint cannot be dismissed merely on the ground that it has been filed after a delay. However, the element of delay is not altogether irrelevant; rather, it operates as a factor affecting the credibility and evidentiary weight of the allegations, particularly where the delay remains unexplained or appears inconsistent with the natural conduct expected from an aggrieved person.

Courts are required to examine whether the complainant has furnished a reasonable explanation for the lapse of time and whether the surrounding circumstances indicate continuous pursuit of legal remedies through available forums, such as reporting to the police or seeking administrative redress, before filing the complaint. It is equally well-recognised that delay by itself is not fatal except in exceptional circumstances, especially where supporting statements of witnesses and other material on record prima facie substantiate the accusation. Consequently, the effect of delay cannot be determined through a rigid or mechanical rule; rather, it must be assessed in light of the facts of each case, the nature of the offence alleged, the conduct of the complainant, and the plausibility of the explanation offered. In this manner, the law maintains a balance between preventing stale or doubtful claims and ensuring that procedural delay does not defeat substantive justice.

The consistent principle emerging *from (2018 MLD 26), (2012 PCr.LJ 498) and (1991 PCr.LJ 685)* is that no statutory limitation is prescribed under the Criminal Procedure Code, 1898, for filing a private complaint, even where the complaint is lodged after considerable delay or where earlier proceedings involving the same parties existed. However, courts examine delay cautiously: unexplained or extraordinary delay may cast doubt on the veracity, genuineness, and bona fides of allegations, particularly when the complainant already knew the identities of accused persons but approached the court belatedly.

In 2018 MLD 26, the Islamabad High Court clarified that although limitation is not a legal bar, delay, especially where a second complaint is filed on the same facts without introducing fresh circumstances or new material against the same parties, may render proceedings suspect and liable to reconsideration. The Court emphasized that summoning accused persons in such circumstances requires judicial application of mind and cannot be mechanical.

Similarly, **in 2012, PCr.LJ 498, the Lahore High Court** reaffirmed that delay alone does not defeat a complaint unless special circumstances demonstrate mala fide intent or prejudice, particularly where the complainant had continuously pursued remedies such as registration of FIR or departmental approaches before filing the complaint. The Court held that dismissal merely on limitation grounds is legally unsustainable because criminal complaints are not governed by strict limitation rules.

Complementing this position, **1991 PCr.LJ 685** further clarified that delay must be evaluated contextually, and no rigid rule exists to determine when it becomes fatal; rather, courts must assess explanations offered by the complainant and surrounding circumstances. Thus, the combined judicial position is that while complaints involving known parties may be filed even after delay, courts scrutinise whether such delay is explained, whether new facts justify subsequent proceedings, and whether the complaint reflects genuine prosecution rather than afterthought or abuse of process.
