

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

**Criminal Acquittal Appeal No.S-19 of 2022**

**(Shabir Ahmed Abbasi v/s. Ghulam Murtafa and others)**

DATE	ORDER WITH SIGNATURE OF JUDGE
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**Before:**

***Mr. Justice Nisar Ahmed Bhanbhro***

Appellant: Shabir Ahmed son of Abdul Majeed Abbasi,  
Through Mr. Athar Abbas Solangi, Advocate.

Respondents: Ghulam Murtaz and 3 others  
Through Mr. Asif M. Nawaz Chandio, Advocate

State: Through Mr. Sardar Ali,  
Deputy Prosecutor, General, Sindh.

Date of Hearing: 08.09.2025

Date of Decision: 08.09.2025

**JUDGMENT**

**Nisar Ahmed Bhanbhro, J.-** Through this Criminal Acquittal Appeal, the appellant has challenged the judgment dated 18.01.2022 (**impugned judgment**), whereby the Respondents/ accused Ghulam Murtaza, Wajid Ali, Javed Ali and Imran were acquitted of the charge in Sessions Case No.116 of 2018 for an offence punishable under section 3 & 4 of the Illegal Dispossession Act, 2005 (IDA) by the Court of Learned IV – Additional Sessions Judge Larkana (**Trial Court**)

2. The facts in nutshell of the prosecution case as unfolded in the complaint are that the Appellant / Complainant lodged complaint before Learned Trial Court alleging therein that he was the owner of property bearing City Survey No 819/1 (area 121-03 square yards acquired by him through valid sale transaction. Complainant was also owner of the property City Survey No 819 to the extent of 50 % share situated in Riyali Mohalla Larkana. It is alleged that on 19.12.2017 at about 10:00 a.m, the accused/ Respondents every one namely Ghulam Murtaza with pistol, Wajid Ali with pistol, Javed Ali with pistol and Imran with repeater trespassed in the property forcibly and illegally dispossessed the appellant on show of weapons, and occupied the property. The incident was witnessed by

Irfan Ali Soomro and Fahad Hussain Tunio. Learned Trial Court conducted preliminary inquiry in the matter and brought complaint on regular file vide order dated 22.02.2018. The accused/ Respondents were summoned to stand trial.

3. The accused / Respondents appeared before Learned Trial Court. The documents of the case were supplied to accused on receipt at Ex.1, they were indicted for charge, to which they pleaded not guilty vide their pleas at Ex.3 to 6 respectively and claimed trial.

4. At trial Complainant examined himself (Shabir Ahmed), CW 1 Mukhtiarkar Niaz Ali and CW 2 SIP SHO Ubaid ur Rehman. The prosecution closed the evidence. The statement of accused under section 342 CrPC was recorded in which they professed innocence and prayed for acquittal.

5. Learned Trial Court hearing the parties through Learned Counsel, acquitted Respondents / accused of the charge, with direction to hand over the possession of the property to the appellant / complainant.

6. Learned counsel for the appellant argued that learned trial Court after appraisal of the evidence came to a conclusion that the appellant was illegally dispossessed, therefore, put him into the possession of the property but acquitted the respondents on the ground that they had no antecedents or characteristics of land grabbing or land mafia. He contended that it is well settled principle that if charge of an offence was established beyond shadow of doubt, then the only course available to the trial Court is to punish the accused for offence they committed. He argued that under the IDA, there was no precondition that the persons who committed offence of illegal dispossession would be acquitted of the charge on the grounds that they did not belong to the gang of land mafia or land grabbers. He contended that the prosecution established its charges beyond the shadow of reasonable doubt and reasons put forth by the Learned trial Court for acquittal of the accused were without any backing under the statute itself. He prayed that the accused may be convicted and sentenced to prison for the offence of illegal dispossession defined under section 3 of the Act and punishable under section 4 of IDA. In support of his contentions, he placed reliance upon case law reported as PLD 2016 SC 769 (Mst. Gulshan Bibi and others v/s. Muhammad Sadiq and others), 2009 SCMR 1066 (Muhammad Akram and 9 others v/s. Muhammad Yousuf and another), 2010 SCMR 1254 (Mumtaz Hussain v/s. Dr. Nasir Khan and others) and PLD 2010 SC 725 (Shahabuddin v/s. The State) wherein it has been held that the antecedents of the accused involved in the offence of illegal dispossession were not necessary.

7. Learned counsel for the respondents while controverting the submission of the learned counsel for the appellant argued that the respondents were never in possession of the property in question. It was the stance of the accused right from the day trial commenced. He contended that accused tendered no objection for handing over the possession of property CS No 819/1 during trial. He argued that the property was under joint ownership and possession of the appellant Shabir Ahmed Abbasi and his brother Aftab Ahmed. He argued the respondents had got no concern of whatsoever nature with the property; however, Mst. Zahida Parveen, widow of late Aftab Ahmed was residing in 50% portion of the house, which was owned by late Aftab Ahmed. He argued that the relation between the parties on the assassination of Aftab Ahmed, who was brother-in-law of respondents and the brother of the appellant, became strained and they started disputing over the possession of the property with the widow of late Aftab Ahmed. He contended that matter in hand was rightly dealt with by the learned trial Court and the respondents were acquitted on the appreciation of the evidence, which lacks the essential characteristics as to the dispossession of the appellant at the hands of the respondents. He prayed for disposal of the acquittal appeal.

8. Learned Deputy Prosecutor General supported the impugned judgment and contended that there is no irregularity, perversity, misreading or non-reading of the evidence on record and after the acquittal of the accused in the case, the presumption of double innocence was in their favour. He prayed for dismissal of the appeal.

9. Heard arguments and perused the material available on record. This appeal under section 417(2) Cr.P.C. has been filed along with an application for grant of special leave to appeal as the Respondents were acquitted by the Learned Trial Court in proceedings result of the complaint instituted by the complainant / appellant under section 3/4 of the IDA. Since Learned Counsel for the Appellant has raised a plea that the Trial Court acquitted the accused on the ground that they had no characteristic or antecedents of land grabbing and land mafia, that issue stands already settled by Learned Apex Court. Therefore, to examine this legal aspect of the case and to reappraise the evidence, the application for grant of special leave to appeal is accepted and treated as an appeal under section 417(2) CrPC.

10. Learned Trial Court formulated following point for determination:

***Whether present accused on 19.12.2017 at about 10:00 a.m, being armed with deadly weapons forcibly and illegally occupied the house bearing C.S No.819 admeasuring 1175 square feet situated at Muhalla Riyali Bagh Larkana and illegally dispossessed the complainant from said property?***

11. Learned Trial Court resolved the above point in the impugned judgment in para No 17 in the following manner:

*“Besides, during spot inquiry the Mukhtiarkar concerned found the alleged property locked, while widow of deceased was found available along with her children at her own property, while the SHO concerned also did not see accused having occupation over the property and admitted that photographs so produced in evidence by him in respect of some armed persons were captured from outside of property. with regard to case of Illegal Dispossession Act, there should be iota of evidence to establish that accused have any characteristic or antecedents of land grabbers and it is held by the Honorable Superior Court that the spirit of Illegal Dispossession Act 2005 is to proceed against persons who were professional land grabbers or members of land mafia and not against a person accused of solitary act of illegal dispossession.”*

12. The reason assigned by the Learned Trial Court acquitting the Respondents that they did not belong to gang of land mafia and had no characteristics or antecedents was settled by the Honorable Supreme Court in the case of Mst Gulshan Bibi (supra), wherein it was held that the antecedents or the past characteristics of the person accused of dispossessing the owner or occupier of the property without due course of law was irrelevant to bring the case within the ambit of the IDA. The act of dispossession of owner and occupier without due course of law was deemed sufficient to constitute an offence within the meaning and definition of section 3 punishable under section 4 of IDA. It appears that Learned Trial Court was not assisted properly on the issue. Since the act of dispossession of owner from the property was deemed to be an act within the definition of IDA, therefore, Learned Trial Court ought to have appraised the prosecution evidence as per the parameters laid down by Honorable Apex Court in that regard.

13. Honorable Supreme Court of Pakistan in the case reported as PLD 2016 SC 769 (Mst. Gulshan Bibi and others v/s. Muhammad Sadiq and others), held that:

*7. From what has been discussed above it is evident that no provision of the Illegal Dispossession Act, 2005 imposes any precondition on the basis of which a particular class of offenders could only be prosecuted. The Act aims at granting efficacious relief to lawful owners and occupiers in case they are dispossessed by anyone without lawful authority. Section 3(1) of the said Act by using the terms 'anyone' and 'whoever' for the offenders*

*clearly warns all persons from committing the offence described therein and when found guilty by the court are to be punished without attaching any condition whatsoever as to the maintainability of the complaint. So all that the Court has to see is whether the accused nominated in the complaint has entered into or upon the property in dispute in order to dispossess, grab, control, or occupy it without any lawful authority. Nothing else is required to be established by the complainant as no precondition has been attached under any provision of the said Act which conveys the command of the legislature that only such accused would be prosecuted who holds the credentials and antecedents of 'land grabbers' or 'Qabza Group'. It does not appeal to reason that for commission of an offence reported in the complaint filed under the Illegal Dispossession Act, 2005 the Legislature would intend to punish only those who hold history of committing a particular kind of offence but would let go an accused who though has committed the offence reported in the complaint but does not hold the record of committing a particular kind of offence. In our view trial of a case is to be relatable to the property which is subject matter of the complaint, pure and simple. Any past history of the accused with regard to his act of dispossession having no nexus with the complaint cannot be taken into consideration in order to decide whether the accused stands qualified to be awarded a sentence under the Act or not. Once the offence reported in the complaint stands proved against the accused then he cannot escape punishment under the Illegal Dispossession Act, 2005.*

*8. In view of the above discussion we conclude that in any proceedings initiated under Illegal Dispossession Act, 2005, the issues which fall for decision would be whether the offence against a lawful owner or occupier, as described in the complaint, has taken place and whether it is the accused who has committed it without any lawful authority. Anyone found committing the offence described in Section 3 would be amenable to prosecution under the provisions of Illegal Dispossession Act, 2005 and no past record of the accused needs to be gone into by the court.*

*9. In view of the above conclusion, we hold that the first set of cases Muhammad Akram v. Muhammad Yousaf (2009 SCMR 1066), Mumtaz Hussain v. Dr. Nasir Khan (2010 SCMR 1254) and Shahabuddin v. The State (PLD 2010 SC 725) is good law whereas the finding arrived at in the second set of cases i.e. in the case of Bashir Ahmad v. Additional Sessions Judge (PLD 2010 SC 661) and followed in the case of Habibullah v. Abdul Manan (2012 SCMR 1533) which restrict the scope and applicability of the Illegal Dispossession Act, 2005 is not a good law. Resultantly, Civil Petition*

*No. 41 of 2008 is converted into appeal and allowed. Likewise, Civil Appeals Nos. 2054/2007 and 1208/2015 are also allowed. The impugned judgments in all three connected cases are set aside and the cases are remanded back to the High Court for their decision afresh on merits in accordance with law.*

14. Admittedly, the disputed property bearing City Survey No.819 (total area 54.60 sq yards) of Larkana City was joint property of the appellant Shabir Ahmed Abbasi and his brother late Aftab Ahmed to the extent of 50% share each. Aftab Ahmed passed away and the property to the extent of 50% share remained in possession of his widow, where she is residing alongwith her minor children. The appellant had lodged complaint on 19.12.2017 alleging dispossession at the hands of respondents No.1 to 4 by show of weapons in presence of the witnesses Farhan and Irfan. The property in question is situated in Muhalla Riyali Bagh, Larkana. During course of trial an application under section 7 of the Act was preferred, the said application was partly allowed vide order dated 11.09.2018 to the extent of property survey number 819/1; whereas for remaining property, the learned trial Court observed in para-6 of the Order dated 11.09.2018 that to resolve the issue of property used as residential house the evidence of Mst Zahida Parveen widow of deceased Aftab Ahmed was essential. Record transpired that neither the appellant nor respondents called the widow for her evidence so as to establish that who actually was in possession of the disputed property and whether the act of dispossession took place or not. In absence of such a crucial piece of evidence, it would not be adjudged that whether the appellant was dispossessed by force or he did all along did not remain in possession of the property. It is also an important aspect of the case that during the preliminary enquiry, Mukhtiarkar City visited the property, in its report Mukhtiarkar mentioned that the property was owned by the appellant and was in the physical possession of respondents No.1 to 4 and Zahida Parveen, widow of late Aftab Ahmed. The said Mukhtiarkar appeared as a witness before the trial Court, wherein he in his cross examination stated as under:

***“It is correct that at the time of visiting site, I have not recorded statements of local persons. Voluntarily says I verbally enquired. At the time of visiting site, it was locked. It is correct that when I visited the site, Mst. Zahida w/o late Aftab Ahmed was available alongwith her children in her house and no other person was available.”***

15. The S.H.O, P.S. Civil Lines was also examined. In his cross examination, he stated that **“I visited the property in dispute and captured the photographs outside the house and laboratory”**. However, in examination-in-chief said witness deposed that he found no person armed with weapons available and in possession of the laboratory.

16. Reappraisal of the evidence revealed that Appellant has leveled specific allegation of dispossession from the property by the Respondents / accused. The Respondents in cross examination to the complainant put a specific question that they did not dispossess the appellant of the disputed property. it further transpired from record that during trial appellant filed an application under section 7 of the Act for restoration of possession till the final disposal of the case. The application was allowed vide order dated 21.02.2018, to the extent of property C.S No 819/1 on account of no objection tendered by the Respondents / accused. However, for the remaining property it was dismissed and its disposal was made subject to the evidence of Mst. Zahida Parveen.

17. Reappraisal of the evidence revealed that it did not come on record that who actually was in possession of the disputed property. If the disputed property remained in possession of Mst. Zahida Parveen, she being a joint owner admittedly would not be subject to any proceedings under sections 3 & 4 of the IDA and matter would fall under the domain of Civil Court for the partition of property under the provisions of Partition Act. therefore for

18. For what has been discussed herein above, a case for indulgence of this Court under its appellate jurisdiction is made out. Consequently, this acquittal appeal is allowed, the impugned judgment dated 18.01.2022 stands set aside. Accordingly, the matter is remanded back to the Learned Trial Court by exercising the powers conferred under section 423(1)(a) CrPC with directions to summon and examine Mst. Zahida Parveen. The learned trial Court is expected to complete the exercise of recording the evidence of Mst. Zahida Parveen widow of Aftab Ahmed within a period of two months from the date of receipt of this order. After recording the evidence of Mst. Zahida Parveen the statement of the accused shall be recorded afresh and matter will be decided on its merits without being influenced by the earlier judgment of acquittal and instant order.

Criminal Acquittal Appeal stands disposed of in the above terms. Office to send copy of this order to Learned Trial Court for compliance

**Judge**

*Manzoor*

*Dated:08.09.2025*

*Larkana*

*Approved for reporting*