IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 199 of 2024.

Appellant:	**Qasim Hussain through Mr. Mohammad Ali Phulpoto, Advocate.**
Respondents :	**Nemo**
Date of hearing:	**29.04.2026**
Date of decision:	**29.04.2026**

JUDGMENT

TASNEEM SULTANA, J:- Through the instant Criminal Acquittal Appeal, the appellant/complainant has called in question the judgment dated 27.01.2024 passed by the learned Additional Sessions Judge-IV, Malir, Karachi in IDA Complaint No.34 of 2021, instituted under Sections 3 and 4 of the Illegal Dispossession Act, 2005, whereby respondent No.1/accused Faheem Khan was acquitted of the charge under Section 265-H(1), Cr.P.C.

2. The brief facts of the prosecution case are that the appellant/complainant alleged that respondent No.1, along with his co-accused, had illegally dispossessed him of Plot Nos. R-82 and R-83, each measuring 120 square yards, situated in Irma Heaven, Survey No.65, Deh Thoming, Tapo Songal, Scheme No.33, Karachi. It was alleged that respondent No.1 had sold the aforesaid plots to the complainant and, thereafter, unlawfully deprived him of their possession.

3. After institution of the complaint and in compliance with the directions issued by the learned trial Court, the police conducted an inquiry and submitted a detailed report after recording the statements of the complainant and other witnesses. On consideration of the inquiry report, the learned trial Court took

cognizance of the matter and ordered that the case be brought on the regular file. Thereafter, upon completion of the requisite codal formalities and supply of copies of the relevant papers to respondent No.1/accused, a formal charge was framed against him at Exh.2, to which he did not plead guilty and claimed trial vide his plea recorded at Exh.2/A.

4. To substantiate the charge, the complainant examined Ms. Dania Hussain, attorney of the complainant, as PW-1 at Exh.3 and SIP Munir Ahmed as PW-2 at Exh.4. Thereafter, learned counsel for the complainant closed the complainant's side vide statement recorded at Exh.5.

5. The statement of respondent No.1/accused under Section 342, Cr.P.C. was recorded at Exh.6, wherein he denied the allegations levelled against him, professed his innocence and claimed that he had been falsely implicated in the present case. However, he neither examined himself on oath in terms of Section 340(2), Cr.P.C. nor produced any witness in his defence.

6. Upon conclusion of the trial and after hearing learned counsel for the complainant and respondent No.1/accused, the learned trial Court, vide judgment dated 27.01.2024, acquitted respondent No.1/accused of the charge by extending to him the benefit of doubt.

7. Learned counsel for the appellant contended that the learned trial Court had failed to properly appreciate the evidence available on record; that the documentary evidence produced by the complainant established his title and interest in the subject property; that respondent No.1 had induced the complainant to purchase the subject plots, received the sale consideration and thereafter permitted third parties to occupy the same; that the inquiry report also reflected encroachment over the project land and lent support to the complainant's version; that the learned trial Court had ignored material pieces of evidence while recording the acquittal; and that the impugned judgment was, therefore, liable to be set aside.

8. Heard. Record perused.

9. The Illegal Dispossession Act, 2005 ("the Act") is a special enactment designed to provide speedy remedy against illegal dispossession from immovable property. The essential ingredients required for invoking relevant provision under the Act are:

> ***(i)*** *That the complainant is the actual owner (or occupier i.e. in lawful possession) of the immovable property in question.*
>
> ***(ii)*** *That the accused has entered or upon the said property.*
>
> ***(iii)*** *That the entry of the accused into or control upon the said property is without any lawful authority; and*
>
> ***(iv)*** *That the accused has done so with the intention to dispossess the complainant, to grab or to control or to occupy the property.*

10. To invoke the provisions of Illegal Dispossession Act, 2005, it is obligatory for the complainant to make out all abovesaid ingredients or elements. In this connection, reference may be made to the case of ***Mst. NASEEM AZIZ*** Vs. ***The STATE and 7 others***, reported in 2016 P Cr. L J 786 [Sindh], wherein it was held as under:

> *"On the contrary it is pre-requisite of the Act, 2005 that all the ingredients or elements must be made out before it is established that the offence has been committed by the accused person. If even one of the ingredients or elements is missing, then no offence is made-out and in this context, I may refer to the decision as appeared in 2010 PCr.LJ P.1046."*

11. Now, it is to be adjudged as to whether the appellant / complainant has been succeeded in making out all the aforesaid ingredients. As regards the first ingredient, it may be observed that in subsection (1) to Section 3 of the Illegal Dispossession Act, 2005, protection has been provided to the **"owner"** and "**occupier**", against illegal and forcible dispossession. Clause (c) of Section 2 of the Act, 2005 defines "**occupier**" to be "*person who is in* ***lawful possession*** *of a property"*. The claim of the appellant / complainant in instant case is that she being **lawful owner,** could not be illegally and forcibly dispossessed by the respondents.

12. The core question involved in the appeal in hand is whether the learned trial Court was justified in acquitting the accused on the ground that the complainant failed to establish the ingredients of illegal dispossession beyond reasonable doubt. It is to be seen whether the appellant established that he was in lawful possession of the properties in question before the alleged illegal dispossession.

13. Perusal of the record reveals that the complainant's case primarily rests upon the testimony of PW-1 Ms. Dania Hussain, attorney of the complainant, and PW-2 SIP Munir Ahmed, the Inquiry Officer. A careful examination of the testimony of PW-1 Ms. Dania Hussain reveals that she admitted, during cross-examination, that possession of the subject plots had not been delivered to the complainant and that the sub-lease relied upon by the complainant did not bear the signatures of respondent No.1. These admissions materially undermine the complainant's allegation that respondent No.1 had delivered possession of the subject plots to him. A complaint under the Illegal Dispossession Act, 2005 necessarily presupposes prior lawful possession of the complainant and his subsequent dispossession therefrom. The evidence available on record does not establish that the complainant was ever placed in actual physical possession of Plot Nos. R-82 and R-83. Mere production of documents or assertion of purchase does not, by itself, establish possession for the purposes of criminal liability under the Illegal Dispossession Act, 2005.

14. The testimony of PW-2 SIP Munir Ahmed is equally unhelpful to the complainant. Although he deposed regarding the inquiry conducted by him, he candidly admitted during cross-examination that his report did not show any association of respondent No.1 with land grabbers, nor did it establish that respondent No.1 had ever delivered possession of the subject plots to the complainant. He further admitted that it was not mentioned in his report that respondent No.1 had executed any lease deed in favour of the complainant, that no witness from the locality was associated during the inquiry, and that the inquiry did not reveal that respondent No.1

had dispossessed the complainant. These admissions are of considerable significance. The Inquiry Officer himself acknowledged the absence of evidence demonstrating either delivery of possession to the complainant or his subsequent dispossession by respondent No.1, thereby lending no support to the complainant's allegations.

14. The record further reflects that the complainant's grievance essentially arose out of competing claims concerning a housing project and transactions relating to the subject plots. Resolution of such controversies ordinarily requires adjudication of title, validity of documents, rights flowing from agreements and the question of possession arising therefrom. Such matters are predominantly civil in nature unless there is clear evidence of criminal dispossession by an identified accused person. The record is devoid of any such evidence.

16. It has also come on record that respondent No.1 consistently maintained that he himself had been dispossessed from the project and had instituted civil proceedings before a competent forum. Whether such plea ultimately succeeds or not is of little relevance for the present purposes; however, the existence of such litigation further indicates that the controversy between the parties is not free from dispute and reinforces the conclusion that the matter is predominantly civil in nature.

17. The findings recorded by the learned trial Court are fully supported by the evidence available on record. Learned counsel for the appellant has been unable to point out any material piece of evidence which was ignored, misread or misconstrued by the learned trial Court. Upon reappraisal of the evidence, I do not find that the conclusions drawn by the learned trial Court suffer from any material illegality, misreading or non-reading of evidence warranting interference by this Court in exercise of appellate jurisdiction against acquittal. The Hon'ble Supreme Court of Pakistan in the case of *Muhammad Riaz v. Khurram Shehzad and another* (2024 SCMR 51) has held as under:-

> *"10. The aforesaid set of circumstances creates misgivings and suspicions regarding the presence of the prosecution witnesses at the scene of the crime, and the discrepancies and defects in the investigation and the prosecution case pointed out by the learned High Court in the impugned judgment also colors the case in doubt and improbability. Therefore, the learned High Court rightly held that the prosecution badly failed to substantiate the case against the respondent No.1, and the learned Trial Court was not justified in convicting him on the strength of untrustworthy or uncorroborated evidence which was full of material contradictions, especially contradictions in the ocular and medical evidence. It is a well-settled exposition of law that in an appeal against acquittal, the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, which cannot be displaced lightly."*

18. It is well settled by now that the scope of an appeal against acquittal is very narrow and there exists a double presumption of innocence in favour of the accused. The Courts ordinarily do not interfere with an order of acquittal unless the same is shown to be perverse, arbitrary, foolish, artificial, speculative or ridiculous, as held by the Honourable Supreme Court in the case of *State v. Abdul Khaliq and others* (PLD 2011 SC 554), wherein it was held as under:-

> *"From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence, such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking*

conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous."

19. In view of the above facts and circumstances, as well as the settled principles governing acquittal appeals, I find no illegality or infirmity in the impugned judgment passed by the learned trial Court warranting interference by this Court. Consequently, this Criminal Acquittal Appeal was dismissed in limine.

20. These are the reasons for my short order dated 29.04.2026.

J U D G E

Shabir/P.S.