

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.767 of 2022

Appellant : Muhammad Sarfaraz
Through Mr. Muhammad Shahnawaz Khan
Advocate.

Respondent No.4 : The State
Mr. Muhammad Mohsin Mangi, Asstt: P.G Sindh

Date of hearing : 13.05.2025

Date of judgment : 30.05.2025

JUDGMENT

KHALID HUSSAIN SHAHANI, J.:- This Criminal Acquittal Appeal, filed under Section 417 (2-A) Cr.P.C., challenges the order dated September 22, 2022, passed by the learned IIIrd Additional Sessions Judge, Karachi Central, in Complaint No.28/2021. By the impugned order, the learned Judge disposed of the complaint filed under the Illegal Dispossession Act, 2005, and acquitted the respondents No.1 to 3.

2. The appellant, Mr. Muhammad Sarfraz, initiated a complaint against the respondents under the Illegal Dispossession Act, 2005, asserting that he, as the duly constituted attorney of Mr. Arsalan Ahmed (alleged lawful owner of House No. R-76, Block-14, F.B. Area, Karachi), was illegally dispossessed from the property. The appellant claims to have taken physical possession of the property after its purchase via a registered sale deed in August 2020 and had contracted for construction work. He alleged that despite a mutual understanding reached at the police station in June 2021 (where parties agreed not to interfere with the property without a court order), the respondents, particularly in the midnight of August 24/25, 2021, forcibly entered, constructed upon, and illegally occupied the property.

3. The respondents, on the other hand, contended that the actual owner of the property was Mst. Gul Cheher, the maternal aunt of Respondent No.3, Muhammad Junaid. They asserted that Mst. Gul Cheher never sold the property or handed over its possession. Respondent No.3, acting as her attorney, had already filed Civil Suit No. 1103/2019 for declaration, cancellation of document, and permanent injunction concerning the property,

predating the complainant's own Civil Suit No. 677/2021. The respondents argued that the complainant had concealed the pendency of Civil Suit No. 1103/2019 and that the dispute was entirely civil in nature, falling outside the purview of the Illegal Dispossession Act.

4. Before the trial court, the respondents filed an application under Section 265-K Cr.P.C., seeking their acquittal on the grounds that there was no probability of conviction and no reasonable grounds to believe they had committed an offense under the Illegal Dispossession Act. The learned IIIrd Additional Sessions Judge, after hearing arguments from both sides and examining the available material, allowed this application, thereby acquitting the respondents.

5. The learned IIIrd Additional Sessions Judge, Karachi Central, found that a civil dispute concerning the property was admittedly pending before competent Civil Courts (Civil Suit No. 1103/2019 filed by Respondent No.3 and Civil Suit No. 677/2021 filed by the complainant). An inspection conducted by the Nazir in Civil Suit No. 677/2021 was silent about alleged dispossession of the complainant, and the Nazir was informed by neighbors that the property had been lying vacant since 13 to 14 years. The complainant had concealed the facts regarding the institution of Civil Suit No. 1103/2019 by Respondent No.3, leading to an inference that the complainant has not come before the Court with clean hands. Since the parties were already engaged in civil litigation regarding the possession and title of the property, the dispute was fundamentally civil in nature, and the question of title was pending before a competent Civil Court prior to the instant complaint. The court, fortified by the judgment reported in 2010 SCMR 1254, decided to abstain from further proceedings against the accused/respondents. Accordingly, the application under Section 265-K Cr.P.C. was allowed, and the accused/respondents were acquitted.

6. Learned counsel for the appellant vehemently challenged the impugned order, arguing that it was contrary to the available material and established legal principles. He emphasized that the Illegal Dispossession Act, 2005, is applicable even during the pendency of a civil dispute, particularly if a party is forcibly dispossessed, relying on 2016 SCMR 1931. He contended that the Nazir's inspection report, contrary to the trial court's finding, clearly showed illegal structural alterations and the respondents'

attempt to integrate House No. R-76 with the adjacent House No. R-77, proving dispossession. He also highlighted a prior court order in Cr. Misc. Application No. 741/2021 that directed police protection for the appellant's possession. He argued that the trial court failed to properly appreciate the evidence and prematurely acquitted the respondents without a full trial, which was necessary to establish the facts and administer justice. He maintained that the criminal complaint was not an abuse of process but a legitimate action against criminal acts of dispossession.

7. I have extended anxious consideration to the arguments advanced by learned counsel for the appellant and would like to decide the instant appeal with the able assistance of the learned DPG for the State and have meticulously perused the impugned order, the grounds of appeal, and the entire record.

8. The crux of this appeal revolves around the proper exercise of powers under Section 265-K Cr.P.C., which allows a court to acquit an accused if it finds that there are no reasonable grounds for believing that the accused committed the offence and that there is no probability of conviction. This power is intended to prevent unnecessary harassment and futile prosecution, but it must be applied with due care and a thorough consideration of the available material.

9. Upon a comprehensive re-appraisal of the trial court's order and the arguments in appeal, I find myself in agreement with the learned IIIrd Additional Sessions Judge, Karachi Central. The record clearly demonstrates that the dispute between the parties is intrinsically linked to conflicting claims of title and possession over the subject property. This is evidenced by the fact that two civil suits (No. 1103/2019 and No. 677/2021) were, and presumably still are, pending before competent civil courts when the criminal complaint was filed. The learned trial judge specifically noted that Civil Suit No.1103/2019 was instituted by Respondent No.3 as attorney for Mst. Gul Cheher prior to the complainant's own civil suit and the criminal complaint. This crucial fact indicates that the property was already subject to a contentious civil dispute well before the alleged acts of illegal dispossession. In such a scenario, where rival claims to ownership and possession are already under the scrutiny of civil courts, the criminal forum should exercise extreme caution. Moreover, the trial court's assessment of the Nazir's

inspection report is particularly significant. The finding that the report was "silent about alleged dispossession of the complainant" and that the Nazir was informed by neighbors that the property had been "lying vacant since 13 to 14 years" directly undermines the appellant's fundamental claim of being in active physical possession and subsequently dispossessed. While the appellant's counsel asserts a different interpretation of the Nazir's report regarding structural changes, the trial court, having directly examined the report, found no evidence of dispossession. This finding, based on the preliminary material before the trial court, provides a valid basis for concluding that there were insufficient grounds to proceed with a criminal trial for illegal dispossession. The learned trial judge also found that the complainant had concealed material facts, specifically the pendency of Civil Suit No. 1103/2019. Such concealment, particularly in a matter that is deeply intertwined with civil litigation, justly raises concerns about the bona fides of the criminal complaint and suggests that the criminal process might be invoked to gain an undue advantage in a civil dispute.

10. The reliance on 2010 SCMR 1254 by the trial court is appropriate in a context where the primary contention is ownership and possession, which are best determined by a civil court. While 2016 SCMR 1931 (as cited by the appellant) indeed discusses the applicability of the Illegal Dispossession Act even during civil litigation, its application is not automatic. The criminal court must still find sufficient *prima facie* evidence of a distinct criminal act of dispossession, which, based on the record, the trial court found lacking. In cases where the title and possession are highly contentious and subject to parallel civil proceedings, and the allegations of dispossession are not unequivocally supported by the material, dismissing the criminal complaint under Section 265-K Cr.P.C. is a sound exercise of judicial discretion.

11. I am satisfied that the learned IIIrd Additional Sessions Judge applied his judicial mind, considered the relevant material, and correctly concluded that there were no reasonable grounds to believe that the respondents committed an offense under the Illegal Dispossession Act, 2005, such that there was a probability of conviction. The dispute appears to be genuinely civil in nature, and the appropriate forum for its resolution is the civil court, where the title and possession issues are already being litigated. Allowing the criminal proceedings to continue would amount to an abuse of the court's process.

12. For the detailed reasons articulated above, I find no legal infirmity or material irregularity in the impugned order dated September 22, 2022, passed by the learned IIIrd Additional Sessions Judge, Karachi Central. The learned trial judge correctly exercised his jurisdiction under Section 265-K Cr.P.C. Accordingly, the instant Criminal Acquittal Appeal is dismissed. The impugned order dated September 22, 2022, passed in Complaint No.28/2021, is maintained.

J U D G E