

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Acquittal Appeal No. 16 of 2022

Appellant : Baloch Khan through Mr. Jahanzeb Khan,
Advocate.

Respondent No.1 : The State, Karachi through Mr. Rahat Ahsan,
A.P.G.

Respondent No.2&3. : Nemo

Date of Hearing : 22.10.2025.

Date of Judgment : 11.12.2025.

O R D E R.

TASNEEM SULTANA-J.:- Through this criminal appeal, the appellant calls in question the legality and propriety of the order dated 30.11.2021 passed by the learned Additional District & Sessions Judge-IX, Karachi South, whereby Direct Complaint No.175 of 2021 filed under sections 3 and 4 of the Illegal Dispossession Act, 2005 was dismissed on the ground of maintainability, resulting in acquittal of the accused persons.

2. Brief facts are that the appellant, acting as General Power of Attorney being real brother of owner, Mst. Hina Maha Gul, resided in Canada instituted Direct Complaint No.175 of 2021 under sections 3 and 4 of the Illegal Dispossession Act, 2005, alleging illegal dispossession of leasehold cum commercial properties bearing plot No.95 and plot No.2544, Lane No.12, Block-B, Nayabad, Lyari, Karachi. Along with the complaint, documentary title, revenue record and allied material were placed on record.

3. Upon receipt of the complaint, the learned trial Court took cognizance of the offence. The accused persons were summoned; police inspection and revenue verification reports were called for; and the accused were directed to furnish surety. The police inspection report reflected possession of the accused persons over the subject properties, whereas the revenue record confirmed ownership of the complainant side. Thereafter, charge was framed against accused Nos.1 and 3 on 06.09.2021, and the case was fixed for recording of evidence. At that stage, an objection was raised by the accused persons regarding maintainability of the complaint on the ground that it had been instituted through an attorney. Despite a reply filed by the appellant, the learned trial Court, vide order dated 30.11.2021, accepted the objection, dismissed the complaint, and acquitted the accused persons.

4. Learned counsel for the appellant contended that the impugned order is the result of misreading of law and improper exercise of jurisdiction; that the issue of maintainability of a criminal complaint stands conclusively settled by the Hon'ble Supreme Court of Pakistan; that a criminal complaint need not necessarily be filed by the person injured and may validly be instituted by a person aware of the offence, including through an attorney, and that even absence or defect of authority would amount, at best, to an irregularity; that once the learned trial Court had taken cognizance, called for reports, and framed charge, the complaint could not lawfully be dismissed on a purely technical objection. Learned counsel thus prayed for setting aside of the impugned order and restoration of the complaint for decision on merits.

5. On the other hand, learned A.P.G. for the State supported the impugned order and submitted that the matter bore a civil complexion and did not fall within the scope of the Illegal Dispossession Act, 2005. It was contended that the learned trial Court committed no illegality in dismissing the complaint and that no interference was warranted.

6. I have considered the submissions and examined the record. The Hon'ble Supreme Court of Pakistan has directly and conclusively addressed the issue in case of *Abdul Hafeez v. Usman Farooqui through his daughter Sharmila Farooqui* and another reported in (2008 PSC [CrI] 959) the apex Court has held that a criminal complaint need not necessarily be filed by the person injured and may validly be instituted by a person aware of the commission of the offence. It has further been observed that where a complaint is filed by an attorney, such complaint can be treated as a complaint filed by the person instituting it, and even absence or defect of authority would, at best, amount to an irregularity and not an illegality going to the root of jurisdiction. This declaration of law is binding under Article 189 of the Constitution.

7. In view of the binding dictum of the Hon'ble Supreme Court, the dismissal of the complaint by the learned trial Court solely on the ground that it was instituted through an attorney is contrary to settled law and cannot be sustained. The proceedings had already advanced beyond the initial stage, and the objection upheld by the learned trial Court did not pertain to the merits of the allegations. Non-suiting the complaint on a technical ground, in the face of binding apex Court authority, amounts to misapplication of law.

8. Accordingly, the impugned order dated 30.11.2021 is set aside. This criminal appeal is allowed. Direct Complaint No.175 of 2021 is restored to its original position before the learned trial Court, which shall proceed with the case from the stage prior to the impugned order and decide the matter on

merits in accordance with law. The observations made herein are tentative in nature and shall not influence the learned trial Court while deciding the case.

JUDGE