

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.277 of 2023

Appellant : Mushtaq Hussain Sahito through Mr.Imdad Ali Sahito, Advocate.

Respondent No.2&3 : Jam Maqbool Hussain & another through Mr. Zahid Hussain Sahito, Advocate.

Respondent No.2 : The State through Mr. Mohammad Noonari, D.P.G.

Date of Hearing : 20.01.2026.

Date of Order : 20.01.2026.

J U D G M E N T

TASNEEM SULTANA, J.— Through the instant Criminal Appeal, the appellant has called in question judgment dated 02.05.2023 passed by the learned IVth Additional Sessions Judge, Karachi East, in Criminal Complaint No.133 of 2020, whereby respondent No.1 Jam Maqbool Hussain was acquitted of the charge under Section 3 of the Illegal Dispossession Act, 2005.

2. Brief facts of the prosecution case are that the appellant filed a complaint under Sections 3, 4, 5 and 8 of the Illegal Dispossession Act, 2005, alleging therein that he is the lawful owner of Flat No.A-32, Al-Ahmed Heights, 2nd Floor, Sub-Plot No.FL-2/A/8, Block 4, KDA Scheme No.36, Gulistan-e-Johar, Karachi. According to the appellant, he purchased the said flat in the year 2016 through Mst. Rubina Jilani from Mst. Shahida W/o Abdul Wahab Soomro for sale consideration of Rs.22,50,000/-, whereafter transfer letter, receipts and indenture of sub-lease were executed in his favour. It was further alleged that on 09.10.2020, at about 7:30 p.m., while the appellant had gone outside for some work, his friend Asghar Ali Rajput was present in the flat; that at about 8:30 p.m., respondent No.1 along with others came there, forcibly entered the flat and dispossessed the appellant's friend; and that when the appellant returned at about 9:00 p.m., he was restrained from entering the flat and was

threatened with dire consequences. The appellant approached the police and thereafter filed the complaint before the learned Sessions Court.

3. The learned trial Court called inquiry report from the SHO concerned. The inquiry report dated 08.12.2020 reflected that, according to record, the appellant was owner of the said flat and that respondent No.1 was in possession thereof since 09.10.2020; however, the report also noted that the parties are close relatives and that dispute regarding the property existed between them. On the basis of the complaint and inquiry report, cognizance was taken and charge was framed against respondent No.1, to which he pleaded not guilty and claimed trial.

4. In order to prove the charge, the appellant examined himself as PW-1 and produced copies of indenture of sub-lease, transfer letter, receipt of transfer fee, sub-lease receipt, application to police, TCS receipt and complaint. PW-2 Asghar Ali was examined as witness of the alleged dispossession. PW-3 Mst. Rubina Jilani, property agent, was examined regarding sale transaction, payment and transfer of documents. PW-4 Shahid Akhter was examined as neighbour regarding appellant's possession/residence in the flat. Thereafter statement of respondent No.1 under Section 342 Cr.P.C. was recorded, wherein he denied the allegations and claimed that he is owner of the property. He did not examine himself on oath nor produced any witness in defence.

5. Learned counsel for the appellant contended that the impugned judgment is contrary to law and record; that the appellant produced registered sub-lease, transfer letter, receipts and other supporting documents showing his title and lawful possession; that PW-2 Asghar Ali fully supported the version regarding forcible entry and dispossession by respondent No.1; that PW-3 Rubina Jilani also supported the sale transaction in favour of the appellant and stated that the appellant had been residing in the flat since 2016; that PW-4 also supported the possession of appellant over the subject flat; that the learned trial Court wrongly converted a case of illegal dispossession into a civil dispute; that the mere fact that the parties are related inter se or that civil proceedings were instituted could not defeat criminal liability under the Illegal Dispossession Act, 2005; and that the impugned judgment suffers from misreading and non-reading of evidence, therefore, the same is liable to be set aside.

6. Conversely, learned counsel for respondent No.1 supported the impugned judgment and contended that the appellant failed to prove forcible dispossession beyond reasonable doubt; that the appellant admittedly was not present in the flat at the time of alleged entry; that no independent person from the Union of the apartment or locality was examined; that no CCTV footage, utility bills or receipts of household articles were produced; that the demand drafts of Rs.9,00,000/- each were admittedly prepared from the account of

father of respondent No.1; that the parties are close relatives and dispute regarding ownership and possession of the flat is essentially civil in nature; and that the learned trial Court rightly acquitted respondent No.1. Learned D.P.G. also supported the impugned judgment and submitted that the appellant's evidence did not furnish a safe basis for conviction and no case for interference in acquittal is made out.

7. Heard. Record perused.

8. The Illegal Dispossession Act, 2005 is a special enactment providing summary and speedy remedy against illegal and forcible dispossession from immovable property. For constituting an offence under Section 3 of the Act, the appellant is required to establish: (i) that he is the actual owner or occupier in lawful possession of the property; (ii) that respondent No.1 entered upon the property; (iii) that such entry was without lawful authority; and (iv) that such entry was with intent to dispossess, grab or control the property. It is well-settled that unless all the ingredients co-exist, no offence under the Act is made out. In *Mst. Naseem Aziz v. The State and others* (2016 P Cr. L J 786 Sindh), it has been held that if even one ingredient is missing, the offence cannot be said to be established.

9. The foundational requirement, therefore, is lawful possession. The expression "occupier" under clause (c) of Section 2 of the Act means a person in lawful possession of the property. The protection of the Act extends to a lawful owner or lawful occupier, and not to a person whose possession itself is doubtful, disputed or clouded by serious civil controversy. Thus, in a complaint under the Illegal Dispossession Act, 2005, proof of title or entitlement alone is not sufficient; the appellant must also establish settled lawful possession and forcible dispossession through confidence-inspiring evidence.

10. The core question in this appeal, therefore, is twofold: firstly, whether the appellant, on the basis of evidence brought on record, succeeded in proving that he was in settled lawful possession of the subject flat and was forcibly dispossessed therefrom by respondent No.1 within the meaning of Section 3 of the Illegal Dispossession Act, 2005; and secondly, whether the learned trial Court, while acquitting respondent No.1, has misread or non-read any material evidence or has taken a view which is so perverse, arbitrary or capricious as to call for interference by this Court in an appeal against acquittal. These questions are to be examined in the light of the appellant's evidence, the defence plea, the admitted relationship between the parties and the settled principles governing interference in an acquittal appeal.

11. In the present case, the appellant produced documents including indenture of sub-lease, transfer letter, receipt of transfer fee and sub-lease receipt in support of his claim regarding purchase and transfer of the flat. These

documents may support his claim that the flat stood transferred in his name, but in a criminal trial under the Illegal Dispossession Act, 2005, the appellant was also required to establish, through confidence-inspiring evidence, that he was in settled lawful possession of the flat and was forcibly dispossessed therefrom by respondent No.1 on the date and time alleged.

12. The appellant, while appearing as PW-1, deposed that he had purchased the flat in the year 2016 and, after final payment, obtained possession and started residing therein. However, in cross-examination, he admitted that the demand drafts of Rs.9,00,000/- each were made from the account of father of respondent No.1. He volunteered that all five brothers had joint property and that, in exchange of share in such property, the subject demand drafts were made from his account. He further admitted that he had not produced original utility bills or maintenance receipts in Court, though he volunteered that those documents were lying in the flat. He also admitted that no complaint was made to the Union office regarding dispossession and none from the Union or apartment was examined as witness. It is also admitted position that the appellant himself was not present in the flat when respondent No.1 allegedly entered with weapons. These circumstances are material because the allegation of forcible dispossession primarily rests on the version of PW-2.

13. PW-2 Asghar Ali stated that he was present in the flat at the relevant time and that two males and two females entered the flat, one male was armed with pistol, and thereafter he was dispossessed. However, his evidence also shows that he did not make any call to police between 8:30 p.m. and 9:00 p.m., nor did he inform the Union of the apartment regarding the incident. He admitted that he was alone at the time of incident and that the entrants did not maltreat him. He further admitted that the appellant had handed over the key of the flat to him on the same day and had asked him that he would pass the night at another place. This part of his evidence creates doubt regarding the manner in which the appellant claims to have been in actual occupation of the flat at the relevant time and the circumstances under which PW-2 was present therein.

14. PW-3 Mst. Rubina Jilani supported the transaction by stating that the flat was purchased through her and that the appellant had paid the sale consideration. However, she admittedly did not witness the alleged occurrence. In cross-examination, she stated that she had not seen respondent No.1 while occupying the flat. Her testimony, therefore, may support the appellant's claim regarding transaction, but it does not prove the alleged forcible dispossession. PW-4 Shahid Akhter also stated that the appellant had purchased the flat and used to reside there, but he too was not a witness of the alleged incident. His evidence is general in nature and does not establish forcible entry or dispossession by respondent No.1 on 09.10.2020.

15. It is also borne out from record that the appellant and respondent No.1 are close relatives. The defence throughout remained that the flat had been purchased by father of respondent No.1 and that the appellant was living there as caretaker. The appellant's own admission regarding demand drafts having been prepared from the account of father of respondent No.1, coupled with admitted family/property dispute and absence of independent corroboration of forcible dispossession, created serious doubt regarding the criminal nature of the allegation.

16. It is settled principle that the Act is not intended to resolve complicated questions of title nor to adjudicate civil disputes of ownership. Where the dispute revolves around competing claims arising from family arrangement, contribution of sale consideration, title documents and rival assertions of possession, the proper remedy lies before a competent civil Court. Criminal proceedings under the Act cannot be employed as substitute for civil adjudication. Reliance is placed on the case of **Syed Abdul Wahab v. VIIIth Additional District and Sessions Judge, Karachi and 6 others (2021 MLD 395 Sindh)**, wherein it has been held that:

“Thus, the dispute between the parties over the subject property was bona fide civil dispute, which was already subjudice before this Court in different suits. It has been held by the Full Bench of the Lahore High Court, Lahore in the case of Zahoor Ahmad and 5 others v. The State reported in PLD 2007 Lah. 231 that the Illegal Dispossession Act, 2005 has no application to cases of dispossession between co-owners and co-sharers and also that the said act is not relevant to bona fide civil disputes, which are already subjudice before civil or revenue Courts. It has also been declared by the Full Bench of the Lahore High Court, Lahore in that case that the Illegal Dispossession Act, 2005 was introduced in order to curb the activities of Qabza groups/property grabbers and land mafia. During the course of arguments, it has been conceded by the learned counsel for the appellant that no material is available with the appellant to establish that respondents belonged to any Qabza group or land mafia or that they had the credentials or antecedents of being property grabbers.

9. In the circumstances of this case mentioned above, I have entertained an irresistible impression that through filing of his complaint under the Illegal Dispossession Act, 2005, the appellant has tried to transform a bona fide civil dispute between the parties into a criminal case so as to bring the weight of criminal law and process to bear upon respondents in order to extract concessions from them. Such utilization of the criminal law and process by the appellant has been found by this Court to be an abuse of the process of law which cannot be allowed to be perpetuated.”

17. Similarly, reliance is placed on the case of **Waqar Ali and others v. The State through Prosecutor/Advocate-General, Peshawar and others (PLD 2011 Supreme Court 181)**, wherein the Honourable Supreme Court has held that:

“...The power to direct an investigation under section 5 ibid is to be exercised judicially and not as an unconsidered or mechanical action undertaken on every complaint filed under the Act, regardless of the

merits of the same. The purpose of the investigation under the aforesaid statute is to ascertain prima facie, the authenticity of what has been stated in the complaint. The complaint itself has to show that an offence cognizable by the Court has been committed by the accused person(s) named therein. In the present case, from the order of the learned trial Court dated 15-7-2009 it is obvious that the matter was sent to the police "on the lodging of the complaint". If the learned trial Court had gone through the complaint, in particular, paragraphs 3 and 4 thereof it would have become apparent to it that the dispute between the parties was not of a criminal nature, and as such cognizance was not required to be taken."

18. Reverting to the present case, although the appellant produced documents showing transfer/sub-lease in his favour, the evidence regarding actual, settled and exclusive possession at the time of occurrence and alleged forcible dispossession by respondent No.1 remained doubtful. The record reflects that the parties are close relatives; respondent No.1 claims the flat on the basis of payment allegedly made by his father; the appellant himself admitted during cross-examination that demand drafts of Rs.9,00,000/- each were made from the account of father of respondent No.1; and civil proceedings concerning the same flat have also been instituted. These circumstances, when examined along with absence of independent corroboration from the apartment Union/locality and the fact that the appellant himself was not present at the time of alleged entry, make the appellant's version doubtful. The controversy, therefore, essentially involves disputed questions of title, contribution of consideration amount, possession and family/property arrangement, which could not safely be converted into criminal liability under the Illegal Dispossession Act, 2005.

19. The learned trial Court, after assessing the evidence, found that the appellant had failed to bring independent and trustworthy evidence to prove forcible dispossession and that the material produced by him disclosed serious civil controversy regarding title, contribution of consideration amount and possession. This conclusion is supported by the evidence on record, particularly the appellant's own admission regarding demand drafts having been prepared from the account of father of respondent No.1, non-production of original utility bills or maintenance receipts, non-examination of any independent witness from the apartment Union/locality and the fact that the appellant himself was not present at the time of alleged entry. In such circumstances, the view taken by the learned trial Court cannot be termed perverse, arbitrary or capricious.

20. It is well settled by now that the scope of appeal against acquittal is very narrow and there exists a double presumption of innocence in favour of respondent No.1. The appellate Court ordinarily does not interfere with a judgment of acquittal unless the same is shown to be perverse, arbitrary, foolish, artificial, speculative or ridiculous. In **Muhammad Riaz v. Khurram Shehzad**

and another (2024 SCMR 51), the Honourable Supreme Court 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.”

21. In this regard, reference may also be made to the case of **State v. Abdul Khaliq and others (PLD 2011 SC 554)**, wherein the Honourable Supreme Court has 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 (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.”

22. In the present case, on re-appraisal of the record, no patent misreading or non-reading of material evidence, perversity, arbitrariness or gross illegality

has been pointed out in the impugned judgment. The learned trial Court has considered the appellant's evidence and has assigned reasons for extending benefit of doubt to respondent No.1. The view taken by the learned trial Court appears to be a possible and plausible view of the evidence available on record. Even if another view may also be possible, that by itself would not furnish a lawful basis to interfere in an appeal against acquittal.

23. In view of the above facts and circumstances, I am of the considered view that the impugned judgment does not suffer from any illegality, perversity, misreading or non-reading of evidence warranting interference by this Court. Consequently, the instant Criminal Appeal is dismissed and judgment dated 02.05.2023 passed by the learned IVth Additional Sessions Judge, Karachi East, in Criminal Complaint No.133 of 2020 is maintained.

These are reasons of my short order dated 20.01.2026.

JUDGE