IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.201 of 2024

Appellant	:	Mst. Shaista Bibi, since deceased through her legal heirs Shahzad Nazir & others through their attorney Ms. Dania through Mr. Mohammad Ali Phulpoto, Advocate.
Respondent No.1	:	The State: Nemo.
Respondent No.2	:	Faheem Khan. Nemo.
Date of Hearing	:	29.04.2026.
Date of judgment	:	29.04.2026.

J U D G M E N T

TASNEEM SULTANA, J.— Through this Criminal Acquittal Appeal, the legal heirs of Mst.Shaista Bibi (since deceased) have assailed the judgment dated 27.01.2024, passed by the learned Additional Sessions Judge-IV, Malir Karachi ("Trial Court"), in I.D. Complaint No.35 of 2021 filed under Sections 3, 4, 7 and 8 of the Illegal Dispossession Act, 2005 ("the Act"), whereby respondent No.2 was acquitted under Section 265-H(i), Cr.P.C., by extending benefit of doubt.

2. Brief facts of the case are that the complainant claimed ownership/sub-lease rights in respect of two plots bearing Nos.R-67 and R-68, each measuring 120 square yards, situated in Irma Heaven, Na-Class No.65, Deh Thoming, Tapo Songal, Scheme No.33, Gadap Town, Karachi ("properties in question"). According to the complainant, she purchased the properties in question in the project of Irma Heaven and sub-lease deeds were executed in her favour. It was further alleged that after payment of full and final amount, allocation letter, confirmation letter, possession letter and payment receipts were issued to the complainant and possession was handed over to her on 30.01.2019. The appellant also obtained search certificates in respect of the properties in question. It was further alleged that the appellant came to know that Faheem Khan, in connivance with Riaz Ahsan, proprietor of M/s Ahsan Town & Ahsan Garden, had illegally occupied the properties in question and started raising illegal and unlawful construction. The complainant moved applications to NAB and the concerned SHO; NAB replied to the application, whereas the concerned SHO did not take any effective action, hence the aforesaid complaint was filed.

3. Upon receipt of the complaint, the learned trial Court called inquiry report from the SHO concerned. SIP Munir Ahmed conducted inquiry and submitted report after recording statement of the complainant, respondent No.2 and

witnesses. Based on such inquiry report, the learned trial Court took cognizance and ordered the case to be brought on regular file. Respondent No.2 appeared and furnished surety. After completing codal formalities and supplying case papers, formal charge was framed against respondent No.2, to which he pleaded not guilty and claimed trial.

4. The prosecution examined two witnesses, namely PW-1 Dania Hussain, attorney of legal heirs/appellants, who produced power of attorney, original payment receipt, copy of cheque, pay order, copy of cheque, pay order, another pay order and copy of sub-lease as Ex.3/A to Ex.3/H; and PW-2 SIP Munir Ahmed, inquiry officer.

5. Respondent No.2, in his statement under Section 342, Cr.P.C., denied the allegations and claimed innocence. The learned trial court after hearing learned counsel for the complainant, learned counsel for the accused and examining the evidence available on record, acquitted the respondent No.2 vide judgment dated 27.01.2024, which has been challenged through this appeal.

6. Learned counsel for the appellants mainly contended that the learned trial Court erred in law and facts while acquitting respondent No.2 despite availability of sufficient evidence; that the inquiry report supported the complainant's version; that the appellants proved his possession through sub-lease, possession letter, search certificate and testimony of witnesses; that the learned trial Court erred in placing undue emphasis on title documents when possession was the primary issue under the Act; and that the impugned judgment is contrary to the evidence available on record and settled principles of law, therefore, the same is liable to be set aside

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 are required to establish: (i) that she is the actual owner or occupier in lawful possession of the property; (ii) that the accused 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 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 Act, proof of title or entitlement alone is not sufficient; the appellants are also required to establish settled lawful possession and forcible dispossession through confidence-inspiring evidence.

10. The core question in this appeal is whether the learned trial Court, after recording evidence, misread or non-read any material evidence while holding that the appellants failed to prove lawful possession and forcible dispossession by respondent No.2 within the meaning of Section 3 of the Act. It is also to be examined whether the acquittal recorded by the learned trial Court is so perverse, arbitrary or capricious as to call for interference by this Court in an appeal against acquittal.

11. In the present case, the appellants relied upon sub-lease deeds, search certificates, receipts, allocation letters, confirmation letters and payment schedule to show that the plots stood transferred in the name of complainant Mst.Shaista Bibi. These documents may support the claim of the appellants regarding allotment/sub-lease of plots Nos.R-67 and R-68, but in a criminal trial under the Act, the appellants were further required to prove that they were in settled lawful possession of the said plots and that such possession was forcibly taken by respondent No.2.

12. PW-1 Dania Hussain, attorney of the appellants, deposed that the complainant had purchased plots from Faheem Builders and that original files of plots Nos.R-67, R-68 and R-82 were handed over. She further deposed regarding payments, sub-leases and visit to the site. However, her own evidence shows that when the appellants party visited the site for demarcation, construction raised by the builder was being demolished and one Mustaqam Builders claimed purchase of the property. She also deposed that Ahsan Town personnel did not allow them to visit their plots and that the appellants party approached respondent No.2 regarding such events. This part of evidence itself indicates that the controversy at the site involved other builders/persons and that actual possession at the site was seriously disputed.

13. During cross-examination, PW-1 admitted that an application was moved to police wherein it was mentioned that possession was not handed over to them. Though she denied the suggestion that the complaint was false, the said admission is material because the very foundation of the complaint under the Act rests upon the appellants' settled lawful possession and subsequent forcible dispossession. Where possession itself is doubtful, the charge under Section 3 of the Act cannot safely be sustained.

14. PW-2 SIP Munir Ahmed, the inquiry officer, deposed in examination-in-chief that during inquiry he visited the subject property and found it open land. He further stated that he came to know that the property was in possession of Ahsan

Garden and Ahsan Town Builders. He also stated that Ahsan Builders had occupied the subject land by demolishing the boundary wall and that Mustaqam Builders had also disclosed their claim regarding the property. His evidence, therefore, does not show that respondent No.2 was in actual possession of the disputed plots or that he dispossessed the appellants. Rather, it indicates that possession at the site was claimed or held by other builders/persons and the matter was surrounded by rival claims.

15. The cross-examination of PW-2 further weakens the prosecution case. He admitted that his report does not show that respondent No.2 was associated with land grabbers. He further admitted that it does not transpire from his report that respondent No.2 ever gave possession to the appellants party. He also admitted that it was not mentioned in his report that respondent No.2 executed lease deed in favour of the appellants party. More importantly, he admitted that he had not associated any witness from the site and that it did not come on record that respondent No.2 had dispossessed the appellants party. These admissions directly go to the root of the matter and show that the essential ingredients of Section 3 of the Act were not established.

16. The statement of respondent No.2 under Section 342, Cr.P.C. also shows that his defence was that he himself had been forcibly dispossessed from the project by other builders due to political influence. He did not claim ownership of the subject plots and stated that the plots were allotted to the appellants party, but he denied delivery of possession and denied execution of lease agreement in favour of the complainant. He further stated that he had filed suits before this Court regarding his own dispossession from the project. The said plea, when read with evidence of PW-1 and PW-2, further indicates that the dispute revolves around rival claims of builders/allottees and actual possession at the site.

17. The learned trial Court, after examining the evidence, reached the conclusion that the appellants/prosecution failed to prove the case beyond reasonable doubt. Such conclusion is supported by the record, particularly in view of non-establishment of settled lawful possession, absence of independent site witness, failure to prove forcible dispossession by respondent No.2 and failure to show that respondent No.2 was associated with land grabbers. The view taken by the learned trial Court, therefore, cannot be termed perverse, arbitrary or contrary to the record.

18. It is well settled that the scope of appeal against acquittal is very narrow and there exists a double presumption of innocence in favour of respondent No.2. 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."

19. 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."

20. 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, this Criminal Acquittal Appeal was dismissed in limine and the judgment dated 27.01.2024 passed by the learned Additional Sessions Judge-IV,

Malir Karachi, in I.D. Complaint No.35 of 2021, acquitting respondent No.2 under Section 265-H(i), Cr.P.C., was maintained vide short order dated 29.04.2026 and these are the reasons thereof.

JUDGE