IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.200 of 2024

Appellant	:	Aurang Zaib through his her attorney Dania Hussain through Mr. Muhammad 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 appellant namely, Aurang Zaib, through attorney Dania Hussain, has assailed the judgment dated 27.01.2024, passed by the learned Additional Sessions Judge-IV, Malir Karachi ("Trial Court"), in I.D. Complaint No.33 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-84 and R-85, each measuring 120 square yards, situated in Irma Heaven, Na-Class No.65, Deh Thoming, Tappo Songal, Scheme No.33, Karachi ("properties in question"). According to the complainant, he purchased the properties in question in the project of Irma Heaven and sub-lease deeds were executed in his favour vide registered Nos.444 and 445 dated 26.01.2017 before the Sub-Registrar, Gadap Town, Karachi. 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 appellant and possession was handed over to him on 30.01.2019. The complainant also obtained search certificates in respect of the properties in question. It was further alleged that the complainant 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 statements of the complainant, respondent No.2 and witnesses. On the basis of such inquiry report, the learned trial Court took cognizance and ordered the case to be brought on regular file. The case against Riaz Ahsan was bifurcated and kept on dormant 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 the appellant, 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, who produced inquiry report, verification report of Sub-Registrar and verification report of Micro Filming Office as Ex.4/A to Ex.4/C.

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 appellant, 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 appellant 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 appellant 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 is required to establish: (i) that he 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 appellant is 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 appellant 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 appellant relied upon sub-lease deeds, search certificates, receipts, allocation letters, confirmation letters and payment schedule to show that the plots stood transferred in his name. These documents may support the appellant’s claim regarding allotment/sub-lease of plots Nos.R-84 and R-85, but in a criminal trial under the Act, the appellant was further required to prove that he was 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 appellant, deposed that the appellant had purchased plots Nos.R-84 and R-85, along with other plots, from Faheem Builders. She further deposed regarding payment of consideration, execution of sub-lease and handing over of certain files and stated that certified copies of files of plots Nos.R-83, R-84 and R-85 were handed over, whereas original files of the remaining plots were demanded for raising construction. However, her own evidence shows that when the appellant 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 appellant 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 appellant's settled lawful possession and subsequent forcible dispossession. She also produced copy of sub-lease at Ex.3/H and admitted that it did not bear the signature of respondent No.2. 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 stated that the property was shown to be in possession of Ahsan Garden and Ahsan Town Builders and that Ahsan Builders had occupied the subject land by demolishing the boundary wall. He further stated 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 plots Nos.R-84 and R-85 or that he dispossessed the appellant. 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 appellant party. He also admitted that it was not mentioned in his report that respondent No.2 executed lease deed in favour of the appellant 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 appellant party. These admissions materially affect the prosecution case 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. reflects that he denied the allegation of dispossessing the appellant. His specific plea was that although the project had been initiated by him and the plots had been allotted to the appellant party, possession was never delivered to the appellant, as before completion of formalities and delivery of possession, the project/property was occupied by third parties. He further denied execution of any lease agreement in favour of the appellant and stated that he himself had approached this Court by filing suits regarding his dispossession from the project. When this plea is examined in juxtaposition with the evidence of PW-1 and PW-2, it further strengthens the view that the matter involved rival claims of builders/allottees and disputed possession at the site, rather than a proved case of forcible dispossession by respondent No.2.

17. It is settled that the Illegal Dispossession Act, 2005 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

title documents, allotment papers, builder files, rival assertions of possession and occupation by third parties/builders, the proper remedy lies before a competent civil Court. Criminal proceedings under the Act cannot be employed as a substitute for civil adjudication. In Sami Ul Haq Khilji v. Ali Raza Rizvi and 2 others (PLD 2010 Supreme Court 661), the Honourable Supreme Court disapproved the attempt to convert a bona fide civil dispute into criminal proceedings under the Act. Likewise, in Syed Abdul Wahab v. VIIIth Additional District and Sessions Judge, Karachi and 6 others (2021 MLD 395 Sindh), it was held that the Act is meant to curb the activities of Qabza groups/property grabbers and is not meant to be invoked for ordinary civil disputes involving rival claims of title or possession.

18. The learned trial Court, after examining the evidence, reached the conclusion that the appellant/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 learned trial Court also noticed that respondent No.2 was not shown to be in possession of the plots. The view taken by the learned trial Court, therefore, cannot be termed perverse, arbitrary or contrary to the record.

19. 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.”

20. 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."

21. 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.33 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