JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Acquittal Appeal No.S-81 of 2013
Fayyaz Ahmed v Abdul Raheem & others

Counsel for Appellant	:	Mr. Mian Taj Muhammad Keerio, Advocate, with Mr. Dhirau Mal, Advocate.
Counsel for Respondents	:	Mr. Muhammad Hashim Laghari, Advocate, with Mr. Mola Bux Ayoub Laghari, Advocate for respondent Nos. 1–3, 8 and 9.
The State	:	Mr. Shawak Rathore, Deputy Prosecutor General, Sindh.
Date of Hearing	:	22.10.2026
Date of Judgment	:	02.11.2026

JUDGMENT

Muhammad Humayon Khan, J.: Through this criminal acquittal appeal under section 417 of the Code of Criminal Procedure, 1898 ('Cr.P.C.'), the appellant, who is the complainant in Crime No. 87 of 2011 registered at Police Station Bulri Shah Karim, District Tando Muhammad Khan, challenges the order dated 07.08.2013 passed by the learned Additional Sessions Judge, Tando Muhammad Khan, in Sessions Case No. 78 of 2012. By the said order two applications under section 265-K Cr.P.C. were allowed and the accused were acquitted of the accusations under sections 365, 392, 506(2), 337-H(2), 147, 148 and 149, P.P.C. The appellant seeks setting aside of that order and restoration of the case for recording prosecution evidence. Having considered the grounds urged, the question is whether the factual circumstances disclosed by the prosecution papers and noticed in the impugned order make the acquittal liable to interference.

2. The dispute did not originate in an isolated incident of robbery or abduction. The appellant's own narrative traces it to agricultural land measuring approximately 130 acres situated in Deh Gangyari, Tapo Nuqarji, Deh Ali Pur. He relies upon a lease arrangement stated to have been made on 15.04.2007 with Abdul Rauf Shaikh, for which, according to him, Rs.3,25,000/- was paid. He further claims to have invested in cultivation and standing crops, including sugarcane, wheat, sunflower and chillies, and to have incurred expenditure considerably exceeding the original amount of the transaction. The relationship thereafter deteriorated when he

was allegedly pressed to vacate the land and refused to do so without determination of the respective rights.

3. The appellant further refers to F.C. Suit No. 16 of 2011 instituted before the Court of the Senior Civil Judge, Tando Muhammad Khan. That suit, according to the account pleaded, related to the contest over the agricultural land. The defence, on its part, asserted before the trial Court that Abdul Rauf Shaikh had subsequently executed another registered lease in favour of Abdul Raheem Katiyar on 08.01.2011. The genuineness, validity and effect of either asserted lease are not matters for determination in the present criminal appeal. Their importance is that, on both versions, there was a subsisting and sharply contested claim to the use, management and possession of the same land prior to the criminal occurrence alleged by the appellant.

4. The incident relied upon by the appellant is said to have occurred on 21.03.2011 at about 5:30 p.m. His version is that armed persons, including the nominated accused and 15 to 20 unidentified persons, arrived at the agricultural land in police mobiles, a Mazda vehicle, tractor-trolley and private vehicles. It was alleged that they resorted to firing, threatened the persons present and demanded vacation of the land. The allegations are grave; they must nevertheless be examined in the context of the admitted contest over possession and the earlier criminal proceedings arising from events of the same day.

5. The complainant alleged removal of 100 bags of fertilizer, 50 bags of seeds, pesticides valued at approximately Rs.1,50,000/-, wheat standing on approximately 15 acres, or about 750 maunds, as well as a Russian tractor, a 'Gobal' implement as described in the papers, two cultivators, other agricultural equipment and water-pumping machinery. He further alleged that Haji Muhammad Yousuf Shoro, Muhammad Bux Shoro, Ghulam Nabi Leghari and Inayatullah Leghari, who were engaged as his kamdars or agricultural workers, were forcibly carried away. Threats of dire consequences, including alleged threats of implicating persons in false cases or staging police encounters, were also asserted. The several components of this account abduction, dishonest removal of movable property, intimidation and armed assembly must be assessed separately; no allegation becomes proved merely because all have been included in one FIR.

6. Upon registration of Crime No.87/2011, an investigation was conducted and the accused were sent up for trial. Before any prosecution evidence was recorded, two applications under section 265-K Cr.P.C. were submitted. The accused referred to a sequence of earlier proceedings and contended that the latest

version had been brought about as a counterblast to the criminal action initiated against persons on the complainant's side. The learned trial Court heard the applications and the learned District Public Prosecutor, who, as recorded in the impugned order, conceded their grant. An order of acquittal followed on 07.08.2013.

7. The appellant's principal grievance is that his witnesses were available and ought to have been examined, that the alleged abductees and other eye-witnesses could establish the occurrence, and that the learned trial Court therefore acted prematurely in allowing the applications. Conversely, the respondents have defended the result on the ground that the prosecution narrative was fundamentally weakened by the earlier police proceedings, contemporaneous custody of a person said to have been abducted, the substantial delay in lodging the present FIR, and the broader land dispute. The grounds of appeal contain strong assertions that oral evidence was available, but do not specifically confront the documentary chronology on which the defence relied.

8. The applicable legal position may be stated shortly. An acquittal under section 265-K Cr.P.C. can be recorded before the examination of witnesses, but only if, after hearing the parties and recording reasons, the Court finds no probability of conviction. *The State through Secretary, Ministry of Interior v Ashiq Ali Bhutto (1993 SCMR 523)* recognizes that recording the whole prosecution evidence is not an indispensable precondition. Equally, *Model Customs Collectorate, Islamabad v Aamir Mumtaz Qureshi (2022 SCMR 1861)* makes clear that, if even a remote probability of conviction emerges from the available material, evidence should ordinarily be recorded. The latter judgment also clarifies that the special double presumption attaching to acquittal after full trial does not apply to this kind of intermediate acquittal. The present conclusion, therefore, rests on scrutiny of the particular case and not upon any supposed immunity of the order from appellate review.

9. Reverting to the prosecution narrative, the first material circumstance is the identity of the disputed subject matter. The trigger for the alleged firing, removal of produce and carrying away of labourers was, even according to the appellant, a demand that he leave the agricultural land. His alleged substantial investment, the rival claims under the leases, and the pending civil suit are all different aspects of the same contest. A property dispute never confers a licence to use violence, steal property or abduct a person, and the existence of a civil remedy does not bar prosecution for a distinct criminal offence. The real question here is

whether material identifying such an independently sustainable offence survives the specific defects apparent from the chronology of the case.

10. The second and more important circumstance is that the occurrence of 21.03.2011 was not first reported to the police through Crime No.87/2011. The impugned order records that Crime Nos.59 and 60 of 2011 had already been registered at Police Station Bulri Shah Karim on 21.03.2011, arising out of the controversy between the rival sides. The defence referred to FIR No.59/2011 under sections 324, 447, 511 and 114 P.P.C. and FIR No.60/2011 under section 13-D of the Arms Ordinance. The existence and tenor of those earlier proceedings constitute a specific contemporaneous circumstance; they cannot be ignored while assessing a subsequently lodged counter-version of the same day's events.

11. In particular, as recorded in the trial Court's order, the defence relied on FIR No.60/2011 to show that Haji Muhammad Yousuf Shoro, one of the four persons later described in the appellant's FIR as abducted, had been arrested in the earlier proceedings, allegedly in possession of a tractor and an unlicensed pistol, and that the person and tractor had thus figured in official custody. It was further asserted that when Crime No.87/2011 was lodged, the person so described had already secured bail in the earlier proceedings. These matters are stated here as the contents of, and contentions based upon, the proceedings specifically noticed in the impugned order; they are not a finding upon the ultimate legality of that arrest or recovery.

12. This circumstance strikes directly at a central component of the accusation. The appellant's allegation was not merely that his men were threatened or that they were detained temporarily at the place of occurrence; it was that four named kamdars were kidnapped by an armed group, which included serving police officers. When one of those named persons is simultaneously accounted for in an earlier police case arising from the same episode, the prosecution must be able to explain whether he was arrested, abducted by private individuals, illegally detained under colour of police authority, or released and later taken away again. Those possibilities are legally and factually different. No such reconciliation is identified in the memorandum of appeal or the trial order supplied for present consideration.

13. The significance of the earlier police record is not that police officers can never abduct a person or that an entry of arrest is necessarily truthful. A purported arrest may itself be unlawful and, if proved to be a device for unlawful confinement, can attract criminal liability. The decisive difficulty for the appellant is that the allegation in Crime No.87/2011 is advanced without identifying any material explaining how the asserted kidnapping fits the specific same-day arrest-and-custody

history on which the trial Court was invited to rely. The appellate grounds describe 'strong ocular evidence' in general terms but do not specify a statement, medical or judicial record, custody document or other material capable of resolving that contradiction.

14. A further aspect is that the earlier criminal cases were not remote proceedings registered months or years before the disputed occurrence. They were registered on the very date and at the same police station. The allegation that those proceedings themselves were false or motivated could certainly be investigated and proved. Yet the appellant cannot obtain reversal of an early acquittal merely by characterising the earlier cases as fabricated, when the substance of his appeal does not explain why the contemporaneous record failed to bear upon the probability of a conviction. In this sense, the previous FIRs have a distinct bearing on the case: they provide an alternative and immediately documented account of the confrontation, rather than merely establishing a history of animosity.

15. The allegations of robbery and removal of agricultural property require separate consideration. The narrative refers to a large number of different items, some standing on the land and others constituting movable agricultural goods and machinery. In the light of the existing dispute over possession and cultivation, identifying ownership or possessory entitlement to crops, equipment and stock assumed practical importance. The original lease, alleged subsequent lease, civil suit and manner of possession could affect who was entitled to control the crop or articles. None of these civil questions itself legitimises forcible removal accompanied by threats; however, an offence under section 392 P.P.C. must be supported by material showing the dishonest taking of movable property with the required element of violence or fear, not merely the existence of a disagreement over agricultural assets.

16. The magnitude of the alleged removals also calls for scrutiny. A Russian tractor, cultivators, pumping machinery, hundreds of bags and the asserted quantity of wheat are not inconspicuous items. Their movement would ordinarily involve persons, vehicles and an opportunity for observation or documentary verification. Yet the grounds of appeal do not point to any recovery memo, seizure or identification material, ownership record, stock account, transport evidence or other specific corroboration which the trial Court ignored. The absence of such an item, viewed alone, would not necessarily defeat an otherwise credible direct account. Its relevance here arises from the combination of the rival possession claims, the earlier

police seizure account concerning the tractor, the late counter-FIR and the absence of any identified material resolving those difficulties.

17. The mention of the Russian tractor is especially material. The defence asserted in the impugned proceedings that a tractor was already involved in Crime No.59/2011 and subsequently shown as recovered with the person arrested in Crime No.60/2011. The appellant's version, however, includes a tractor among the items allegedly removed by the newly accused group. It was therefore necessary, at the least, to distinguish the vehicle said to have been stolen from the vehicle covered by the earlier recovery proceedings, or to explain how a single vehicle could be the subject of both descriptions. The grounds of appeal disclose no specific explanation. The appellant's case thus encounters a difficulty concerning not an incidental item but a prominently alleged article of property.

18. As regards the allegation of armed assembly, the FIR attributes participation to named individuals, including officials, alongside 15 to 20 unidentified men. It is settled that, where an unlawful assembly and common object are proved, liability under section 149 P.P.C. does not necessarily require proof of a separate overt act by every member. Nevertheless, the existence of a common object and the participation of the particular respondents cannot be inferred solely from collective language. In the circumstances of this case, the specific prior confrontation and absence of identified supporting material become material to whether the general allegation of firing and armed presence offered a realistic prospect of convicting all nominated persons alike. The charge of rioting cannot independently fill the evidentiary gap in the substantive accusations.

19. The role attributed to respondents who were police officials likewise merits a distinction. Their official status neither immunises them from criminal law nor establishes culpability. If a police officer, acting personally or under colour of office, deliberately joins unlawful abduction, theft or intimidation, the law provides no shelter merely because a police vehicle or uniform was involved. But where the prosecution itself identifies official police cases lodged on the same date and asserts that a person and vehicle were in police custody, the distinction between police action in those proceedings and a privately instigated criminal raid becomes crucial. In the materials reflected in the appeal and impugned order there is no particularised, objectively identifiable circumstance resolving that distinction against these officials beyond their nomination and the general assertion that police vehicles participated.

20. The alleged threats, including a threat to kill the kamdars in a police encounter, cannot be treated as trivial if established. They are, however, narrated as

an adjunct to the demand to surrender the disputed land. The materials supplied do not identify any subsequent independent episode, communication or step taken in execution of the threatened harm, or any separate supporting record which the appellant says the learned trial Court overlooked. Whether threats caused alarm and whether they were issued by the individual respondents would still turn on the credibility and specificity of the same untested narrative that is beset by the contemporaneous documentary difficulty. The mere seriousness of the words attributed to the accused cannot relieve the Court from assessing whether an otherwise sustainable prosecution case is shown.

21. The delay in the registration of Crime No.87/2011 furnishes another circumstance requiring consideration. The impugned order records a lapse of approximately one month and nineteen days from the occurrence on 21.03.2011. The appellant's version supplies an explanation in broad outline: he claims to have addressed telegrams to higher authorities and approached judicial officers before the FIR was recorded. That account is not to be rejected simply because the police allegedly did not register his report immediately. Nor is delay, by itself, a rule of automatic acquittal. What is noteworthy is that the FIR was instituted after the rival cases of 21.03.2011, and the appellate grounds do not identify dates, copies or contents of the intervening representations which would assist in determining whether the complete allegations of robbery and kidnapping had been consistently made from the outset.

22. The lapse assumes greater weight when viewed alongside the development of the parties' litigation. First came the disagreement over the lease and possession and institution of civil proceedings; next came the same-day criminal cases against persons associated with the complainant; thereafter came Crime No.87/2011 containing extensive allegations against the opposing side and police officers. This chronology does not permit a conclusive finding that the appellant acted maliciously, and no such finding is necessary. It does, however, supply an objectively intelligible explanation for the possibility of embellishment or retaliatory allegations which had to be considered before requiring the respondents to face trial on the later version. The instant appeal does not dislodge this central factual concern.

23. I am also mindful that, had a particularised statement of one of the alleged abductees, an authenticated record of illegal custody, recovery of the allegedly robbed goods, or other incriminating material been identified as having been overlooked, the position would have required materially different consideration. The Supreme Court in *Model Customs Collectorate, Islamabad v Aamir Mumtaz*

Qureshi (2022 SCMR 1861) disapproved premature acquittal precisely because tangible incriminating material remained and a real prospect of conviction could not be excluded. In the present matter, the appellant's challenge does not point to an equivalent piece of specific material overcoming the contradiction concerning the alleged abductee and tractor, or otherwise provide a concrete foundation beyond repeating the accusation and asserting that witnesses were ready to speak.

24. The above conclusion is not founded upon any principle that civil litigation excludes the criminal jurisdiction. The Supreme Court in *Niaz Ahmed and another v Aijaz Ahmed and others (PLD 2024 SC 1152)* has reiterated that a pending civil property dispute does not itself justify acquittal when a prima facie criminal case exists. The case at hand is distinguishable in the way the competing FIRs, custody assertion, subsequent version and unparticularised evidentiary response interact with the accusations. Similarly, in *Abdul Rehman alias Rehman v. The State and another (2024 PCr.LJ 223),* the Sindh High Court emphasised attention to undeniable documents and existing litigation while cautioning that section 265-K remains an exceptional power. Those principles do not warrant blanket immunity in a land dispute, but they do require the entire contemporaneous setting to be appreciated rather than treating the labels 'kidnapping' and 'robbery' as conclusive.

25. The learned trial Court's reasons, it must be observed, are brief. The order reproduces the defence submission in some detail, notes the position of the District Public Prosecutor and then allows the applications. The prosecutor's concession could not, by itself, authorise an acquittal; equally, a fuller explanation of the Court's own assessment would have been preferable. This Court has therefore not treated the concession as decisive, nor assumed the order to be correct merely because the prosecution did not oppose the applications. Rather, the circumstances appearing in the order and the grounds of appeal have been separately considered, including the aspects favourable to the appellant. In the absence of identified material answering the foundational difficulties discussed above, the appellant has not established that the result of the impugned order calls for reversal on this record.

26. A word is necessary about the appellant's repeated assertion that his proposed witnesses were present in Court. The presence of a witness and the existence of a legally sustainable prospect of conviction are not interchangeable propositions. A witness may prove matters within personal knowledge; but the Court is not required to disregard a specific and consequential discrepancy disclosed by the prosecution history merely because a party professes readiness to produce witnesses. The argument would carry greater force if the appeal specified what the abductees or

other witnesses would say about the earlier arrest, the identity and custody of the tractor, and the delay in making the later allegations. That specificity is absent from the appeal as filed. The defect is not simply that witnesses have not been tested; it is that no particular overlooked incriminating material has been pointed out to rebut the fundamental circumstances on which the applications were argued.

27. More than fifteen years have elapsed since the alleged incident and over thirteen years since the impugned acquittal. The passage of time cannot cure an unlawful order and cannot, standing alone, justify denying a complainant an otherwise warranted trial. But where the appeal does not disclose a concrete evidentiary basis requiring restoration, remanding the matter solely to permit repetition of the same accusations would expose the parties to a prolonged process without any demonstrated forensic purpose. Criminal process should not be continued as leverage in a contested agricultural arrangement; equally, genuine crimes remain triable notwithstanding civil disputes. Upon the particular combination of circumstances disclosed here, I am not satisfied that the appellant has identified a sustainable ground to set aside the acquittal.

28. In the cumulative assessment, the decisive considerations are not the mere existence of a civil suit or the formal availability of section 265-K. They are: (i) a longstanding contest over the same land and agricultural property;

(ii) prior FIRs arising from the same day's confrontation;

(iii) the specific account in those proceedings of the alleged abductee and tractor being dealt with in police custody;

(iv) the substantial interval before the subsequent FIR, with no identified intervening material clarifying the full accusations; and

(v) the failure of the appellate challenge to identify particular overlooked material capable of reconciling these features and establishing a realistic prospect of conviction. Each feature must be viewed with its proper limitations; considered together, they furnish the case-specific reasons for declining to disturb the result of the trial Court's order.

29. For the foregoing reasons, the appellant has failed to make out a case for interference with the order dated 07.08.2013 passed by the learned Additional Sessions Judge, Tando Muhammad Khan, in Sessions Case No.78 of 2012 arising from Crime No.87 of 2011, Police Station Bulri Shah Karim. Consequently, Criminal Acquittal Appeal No. S-81 of 2013 is dismissed and the impugned order is

maintained. The procedural observation concerning the accused shown as absconder shall not be understood as approval of the procedure adopted below. Pending application(s), if any, stand disposed of accordingly.

30. The observations made in this judgment are confined to the criminal proceedings under examination and shall not determine ownership, tenancy, possession, crop accounts or any other civil right arising from the asserted lease arrangements; such matters remain within the jurisdiction of the competent civil forum.

JUDGE

Muhammad Danish