

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Crl. Revision Application No.S-105 of 2024

Applicant: Khuda Bux son of Karam Ali (called absent)
Mr. Haris Larik advocate holds brief on behalf of
Mr. Pervez Akhter Talpur, Advocate.

Respondents: Purkho and 08 others.

The State: Through Mr. Dhani Bakhsh Mari, A.P.G.

Date of hearing: 26.08.2025

Date of order: 26.08.2025

O R D E R

Amjad Ali Sahito, J: Through this Crl. Revision Application, the applicant/complainant has impugned the Judgment dated 28.03.2022 passed by learned Additional Sessions Judge-I, Tharparkar at Mithi in Sessions Case No.145/2021 “Re-Khuda Bux Vs. Purkho and others”. After filing the Complaint, report was called and on the basis of report, the Illegal Dispossession Complaint was dismissed. Being aggrieved, the applicant/complainant filed instant Crl. Revision Application before this court.

2. Mr. Haris Larik holds brief on behalf of Mr. Pervez Akhter Talpur and states that he is busy farewell ceremony of Civil Judge and Senior Civil Judge of District Court Mirpurkhas and requests for time. This is not a ground to adjourn the matter as same is pending before this court for last three and four month without any progress. The request so made by Mr. Larik is declined.

3. The instant Criminal Revision Application was presented on 16.04.2022 through Criminal Revision Application the applicant/complainant has impugned the judgment dated 28.03.2022 wherein accused persons were acquitted by the learned trial Court.

4. From the perusal of record, it reflects that the applicant/complainant has filed the complainant under section 3/4 of Illegal Dispossession Act, 2005 that the proposed accused have occupied his agricultural land. After receiving the complaint the trial court has directed to SHO PS Nangar Parkar to conduct the inquiry and submit the report. The report was also called from the

Mukhtiarkar, Nangar Parkar. They submitted their reports and same were taken on record. Then the matter was brought on regular file by the learned trial court.

5. The accused appeared before the trial Court in compliance with the process issued. Relevant documents were supplied to them and then a charge was framed against them. Thereafter the complainant has examined his witnesses and after examination of witnesses the side was closed. Thereafter the statement of the accused under section 342 Cr.P.C was recorded wherein they have denied the allegations of the complainant leveled against them. Neither they were examined themselves on oath, nor led any evidence in their defence. Further they claimed their innocence.

6. After hearing the learned counsels for both the parties the learned trial Court has acquitted the accused persons under section 265-H(1) Cr.P.C.

7. I have perused the material available on the record and so also gone through the evidence of all the witnesses including complainant. During his evidence, the complainant deposed that on 06.09.2021, at around 11:00 or 12:00 noon, his farmer, Heero Kolhi, informed him via telephone that the respondents/accused namely Veenjho, Purkho, Gomando, Jesso, Wakhto, and Jamoon had demolished two of his *landhies*/huts as well as one washroom. However, no specific date or time regarding the alleged illegal occupation of the land or the demolition of the *landhies*/huts and washroom is mentioned in the memo of complaint. In the complaint, it is simply stated that about one month prior to filing the complaint on 06.10.2021, his farmer Heero had informed him of the incident. It is further stated that on the following day, he, along with Nek Mard Hafeez, visited the land in question, implying that he visited the site on 07.09.2021. The complainant also deposed that he submitted an application to the Mukhtiarkar, Nangarparkar, against the accused, who were then called by the Mukhtiarkar. The accused allegedly gave an undertaking to restore the land to him, a fact also mentioned in the memo of complaint. However, the complainant failed to produce a copy of the said application during his evidence, and no such document is attached to the report of the Mukhtiarkar.

8. Moreover, while the complainant testified that two *landhies*/huts were demolished, witness Heero stated that only one hut was dismantled by the accused. Contrarily, the report of the Mukhtiarkar, Revenue Department, Nangarparkar, reflects that one *landhi*/hut and one *chownra*/hut were still intact on the complainant's land, and no mention is made regarding the demolition of a washroom or two huts. The complainant also admitted during cross-examination that the date and time of the incident were not mentioned in the complaint. He further admitted that he did not witness the accused personally taking possession of his land.

9. Additionally, he acknowledged that the date and time when he informed the Nek Mards of the incident is also not mentioned in the complaint. The complainant further admitted that Heero is his farmer and Hafeez Kapri, another witness, is a resident of Jhudo town. He also stated that on 06.09.2021 at 11:00 am, he visited the place of incident along with witnesses whereas in the complaint, he claimed to have gone there on 07.09.2021. He admitted to mentioning accused Gomando as a witness in the complaint. In court, he pointed out a person claiming to be accused Jesso, seated third from the right, but upon inquiry, the individual identified was actually Venjho, not Jesso. Furthermore, witness Hafeez testified that upon learning of the illegal occupation of the complainant's land, he, along with Heero and the complainant, visited the site and found that both *landhies* and one washroom were demolished. He claimed the accused Purkho, Magho, Veevraj, Vakhto, Jumoon, and Jessol were present. It is pertinent to note that Magho, Veevraj, and Jumoon are different individuals whose names were not mentioned in the memo of complaint. During cross-examination, the complainant stated that the offence occurred on 05.09.2021 at around 2:30 pm and that he visited the site on 06.09.2021, where 8 to 10 persons were gathered. He admitted he could not identify accused Jumoon present in court. He also stated that he could not recall whether witness Heero accompanied them from Jhudo or joined them at Nangarparkar on 06.09.2021. Additionally, witness Pathu deposed that he sold one acre of land through a registered sale deed but could not recall the name of the purchaser. He claimed that the accused had forcibly taken possession of his land about 6–7 years ago.

10. As per the memo of complaint, this witness is the seller of the disputed land, yet he could not remember the buyer's name and alleged that the accused have illegally possessed his land. One of the accused, namely Vakhto, is over 80 years of age and was brought to court with the assistance of two individuals. It appears highly improbable that such an elderly person actively participated in the alleged incident. Moreover, the accused have claimed there is a dispute over the demarcation of land between them and the complainant, for which they have submitted an application to the Assistant Commissioner. Such issues fall within the jurisdiction of the Revenue authorities and must be resolved by them. In conclusion, the complainant has failed to establish his case against the accused.

11. The evidence presented by the complainant and his witnesses is inconsistent and contradictory, casting serious doubt on the prosecution's version. The accused are, therefore, entitled to the benefit of the doubt. In such circumstances, the possibility of false implication of the accused cannot be ruled out.

12. It is a well-settled principle of law that a criminal case is to be decided based on the totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination or otherwise of a witness on a particular fact stated by him. A similar view had been expressed by the Honourable Supreme Court of Pakistan in the case of *State v. Rab Nawaz and another* (PLD 1974 SC 87) wherein Honourable Supreme Court has observed that a criminal case is to be decided based on the totality of circumstances and not based on a single element.

13. It is noteworthy that in the impugned judgment the learned trial Judge has pointed out some other material contradictions, which are sufficient to declare that the prosecution could not establish the case against the respondent/accused beyond reasonable doubt and where a single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused, then accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In this regard, reliance is placed on the cases of *Tariq Pervaiz v. The State* [1995 SCMR 1345] *Muhammad Akram*

v. The State [2009 SCMR 230] and Lal Bux alias Lal v. the State (2023 YLR 321) (authored by Zulfiqar Ahmed Khan J.)

14. It is an important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, as presumption of double innocence is attached in the latter case. Reliance is placed on the case of 'Inayatullah Butt v. Muhammad Javed and 2 others' [PLD 2003 SC 562]. Until and unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence no other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice, the Court will not exercise jurisdiction under section 417, Cr.P.C.

15. It is well settled by now that the scope of appeal against acquittal is very narrow and there is a double presumption of innocence and that the Courts generally do not interfere with the same unless they find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as was held by the Supreme Court in the case of State v. Abdul Khaliq and others (PLD 2011 SC 554).

16. The applicant/complainant has failed to establish his case of illegal dispossession by the respondents/accused, and there is no evidence that the land of the applicant/complainant has been occupied by anyone. The learned trial court has rightly passed the impugned judgment, which does not suffer from any illegality or irregularity. Accordingly, the instant Criminal Revision Application stands dismissed.

JUDGE

Adnan Ashraf Nizamani