IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.S-08 of 2026

(Wakeel Ahmed v. Mubeen Ahmed & 05 others)

Mr. Sabir Hussain Abbasi, Advocate joined the proceedings through Video Link.

Mr. Muhammad Raza Katohar, Deputy Prosecutor General.

None present for the Respondents.

Date of Hearing : 03-08-2026
Date of Judgment : 03-08-2026

J U D G M E N T

TASNEEM SULTANA, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 03.01.2026 passed by learned Additional Sessions Judge, Moro, in Direct Complaint/Sessions Case No.502 of 2024, filed under Sections 3 and 4 of the Illegal Dispossession Act, 2005, whereby the private respondents, namely, Mubeen Ahmed, Ameen, Azeem Khan, Nooruddin, Ghulam Mustafa alias Karo and Mukhtiar, were acquitted under Section 265-H(i), Cr.P.C., by extending them the benefit of doubt.

2. Brief facts of the case are that the appellant claims ownership and possession of agricultural land measuring 5-03 acres out of Survey Nos.722/1 and 722/2, situated in Deh Khalso, Taluka Moro, District Naushahro Feroze. According to him, he inherited 25 paisa share through Entry No.31 dated 16.08.1989, acquired a further share through registered Sale Deed No.381 dated 23.04.2005 and also obtained four paisa share pursuant to the judgment and decree dated 08.01.2013 passed in F.C. Suit

No.71 of 2010, followed by execution of registered Sale Deed No.483 dated 28.02.2014 through Court. He further claimed that his title and entitlement to possession were subsequently recognized through the judgment and decree dated 28.11.2017 passed in F.C. Suit No.144 of 2016 and that possession was delivered to him in execution thereof. It was alleged that on 25.04.2024 at about 07:00 a.m., the private respondents, duly armed with weapons, entered upon the land, removed approximately 150 maunds of wheat crop cultivated over 2½ acres and occupied the remaining area bearing sugarcane crop, thereby dispossessing him without lawful authority.

3. Upon presentation of the complaint, reports were called from the Mukhtiarkar (Revenue), Moro, and the Station House Officer, Police Station Moro. After considering the reports, the complaint was brought on the regular file vide order dated 06.08.2024. Necessary copies were supplied to the private respondents and a formal charge under Sections 3 and 4 of the Illegal Dispossession Act, 2005, was framed, to which they pleaded not guilty and claimed trial.

4. In support of the complaint, the appellant examined himself as PW-01 and produced the complaint, orders passed in the earlier execution proceedings, the judgment dated 28.11.2017 passed in F.C. Suit No.144 of 2016, writs and proceedings relating to delivery of possession, contempt proceedings and the registered sale deeds. PW-02 Qalandar Bux supported the alleged occurrence. PW-03 Abdul Razaque, Supervising Tapedar, produced the report of the Mukhtiarkar, his own report and the relevant revenue entries. PW-04 Ali Akbar, SHO Police Station Moro, produced his

report, the report of the ASI, memo of inspection and statements recorded during inquiry. The complainant thereafter closed his side.

5. In their statements recorded under Section 342, Cr.P.C., the private respondents denied the allegations and claimed false implication. Respondent Mubeen Ahmed stated that the appellant had agreed to sell the disputed property to him through an agreement dated 22.02.2024 and that, upon the appellant's refusal to execute the registered sale deed, he filed F.C. Suit No.114 of 2024 for specific performance of contract before the learned Senior Civil Judge, Moro. He produced photocopies of the alleged agreement and the plaint of the said suit. The remaining private respondents pleaded innocence and false implication on account of enmity. None of them examined himself on oath or led any evidence in defence. The learned trial Court, after hearing learned counsel for the complainant and learned counsel for the accused and examining the evidence available on record, acquitted the private respondents vide judgment dated 03.01.2026, which has been challenged through this appeal.

6. Learned counsel for the appellant contends that the learned trial Court failed to appreciate the documentary and oral evidence in its correct perspective; that the appellant's title and possession stood established through successive civil decrees and Court-supervised execution proceedings; that the executing Court, vide order dated 08.08.2023, accepted the Bailiff's report regarding delivery of possession and disposed of the execution proceedings as satisfied; that the official witnesses confirmed that the private respondents were subsequently found cultivating the disputed land; that the agreement dated 22.02.2024 remained unproved; that mere pendency of a suit for specific performance did not constitute

lawful authority to occupy the land; and that the impugned judgment is based upon misreading and non-reading of material evidence and is liable to be set aside.

7. Learned Deputy Prosecutor General supports the impugned judgment and submits that the learned trial Court has properly appreciated the evidence available on record; that the appellant failed to establish the alleged forcible dispossession beyond reasonable doubt; and that no case for interference with the acquittal of the private respondents has been made out. No one has appeared on behalf of the private respondents despite notice.

8. Heard. Record perused.

9. The Illegal Dispossession Act, 2005, is a special enactment providing a summary and speedy remedy against illegal and forcible dispossession from immovable property. For constituting an offence under Section 3 of the Act, the complainant is required to establish: (i) that he is the 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.

10. The foundational requirement is that the complainant must establish his status as an owner or lawful occupier of the property. 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 an owner or lawful occupier who establishes settled possession and subsequent forcible dispossession through reliable and confidence-inspiring evidence. Proof of title or entitlement, though relevant, does not by itself dispense with proof of the alleged act of dispossession.

11. The core question in this appeal is whether the learned trial Court, after recording the evidence, misread or failed to consider any material evidence while holding that the appellant failed to prove the alleged forcible dispossession of the subject land by the private respondents 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.

12. The documentary record produced by the appellant shows that the dispute between the parties has a long civil history. The appellant relied upon the judgment and decree dated 08.01.2013 passed in F.C. Suit No.71 of 2010, the execution proceedings arising therefrom and registered Sale Deed No.483 dated 28.02.2014 executed through Court. Thereafter, F.C. Suit No.144 of 2016 for declaration, possession and permanent injunction was decreed in his favour on 28.11.2017, directing the private defendants to vacate the property and hand over its possession to him. Execution Application No.03 of 2018 was allowed on 18.08.2018 and a writ of possession was issued. Applications filed by different defendants under Section 12(2), C.P.C., were subsequently dismissed, while Civil Revision No.34 of 2022 was also dismissed on 03.09.2022. Ultimately, vide order dated 08.08.2023, the executing Court accepted the Bailiff’s mashirnama

and the receipt of the decree-holder, recorded that possession had been delivered to the appellant and disposed of the execution proceedings as satisfied. This material furnished substantial support to the appellant's claim that he had obtained possession through judicial process before the alleged occurrence.

13. The civil decrees and execution proceedings, however, did not relieve the appellant of the obligation to prove the specific criminal occurrence alleged in the complaint. His case was that on 25.04.2024 at about 07:00 a.m., all six private respondents, acting jointly and duly armed with weapons, unlawfully entered upon the disputed land, removed approximately 150 maunds of wheat and occupied the remaining cultivated area. The burden of establishing the alleged occurrence and the consequent forcible dispossession beyond reasonable doubt continued to rest upon the appellant.

14. The appellant, while appearing as PW-01, stated that the private respondents trespassed into the land, removed the wheat crop and occupied the area bearing sugarcane crop. In cross-examination, however, he admitted that when he reached the subject land on the relevant morning, the private respondents were already present there. No neighbouring cultivator, adjacent landowner, labourer, transporter, purchaser of wheat or any other independent person from the locality was examined to corroborate the allegation that approximately 150 maunds of wheat had been harvested, removed or transported by the private respondents.

15. PW-02 Qalandar Bux, who is the appellant's son, supported the occurrence and stated that the private respondents removed wheat through a thresher and occupied the sugarcane crop. His relationship with the

appellant did not render him an incompetent witness. However, his account, when examined in the context of the admitted longstanding dispute between the parties, was not supported by any independent material regarding the use of a thresher, removal of wheat or transportation of such a substantial quantity of crop.

16. PW-03 Abdul Razaque, Supervising Tapedar, and PW-04 Ali Akbar, SHO Police Station Moro, had not witnessed the alleged occurrence. PW-03 stated that Mubeen Ahmed, Azeem Khan, Manzoor Ahmed and others were in possession and taking the crop. PW-04 stated that the land measuring seven acres had been purchased by Mubeen Ahmed from the appellant's side and was in possession of the private respondents. Their evidence established that the private respondents were found in possession and cultivating the land at the time of the official inquiry, but it did not establish the manner in which they entered into possession or directly prove the occurrence alleged to have taken place on 25.04.2024.

17. Respondent Mubeen Ahmed relied upon an agreement to sell dated 22.02.2024 and stated that he had filed F.C. Suit No.114 of 2024 for specific performance of the said agreement. The agreement was not proved through its attesting witnesses, nor was the alleged payment of consideration independently established. The photocopies of the agreement and the plaint produced with his statement under Section 342, Cr.P.C., did not constitute substantive proof of their contents. The appellant's case was, therefore, required to be assessed on the strength of the evidence produced by him and not upon the weakness or otherwise of the defence plea.

18. The land forming the subject matter of the complaint measured 5-03 acres out of Survey Nos.722/1 and 722/2, whereas PW-03, PW-04 and the

defence material referred to a larger tract measuring seven acres and comprising several survey numbers. The official evidence did not clearly establish that the possession found during inquiry related to the said 5-03 acres, nor did it distinguish that portion from the larger tract referred to in the evidence. No site plan or demarcation report was produced to identify the precise portion allegedly occupied by the accused on the date of occurrence.

19. The mere existence or pendency of civil litigation does not exclude the operation of the Illegal Dispossession Act, 2005, nor can an alleged dispossessor defeat criminal proceedings merely by setting up a contractual claim. At the same time, the appellant was required to establish through reliable evidence that the private respondents had dispossessed him from the identified property in the specific manner alleged.

20. In **BARKAT ALI and 2 others Vs. The STATE and another, 2025 P Cr. L J 41 [Sindh]**, it has been held that:-

> **"In the case of an individual, it must be the manner of execution of his design that may expose him as a property grabber. Additionally, this Illegal Dispossession Act, 2005 does not apply to run-of-the-mill cases of alleged dispossession from immoveable properties by ordinary persons having no credence or antecedents of being property grabbers/Qabza Group/land mafia, i.e. cases of disputes over possession of immoveable properties between co-owners or co-sharers, between landlords and tenants, between persons claiming possession based on inheritance, between persons vying for possession based on competing title documents, contractual for possession."**

The present matter arose from a longstanding contest over agricultural land, followed by a fresh contractual claim shortly before the alleged occurrence. Although the previous civil proceedings supported the appellant's assertion that he had obtained possession through judicial process, the evidence

regarding the alleged forcible dispossession on 25.04.2024 did not remove all reasonable doubt about the occurrence in the manner alleged.

21. 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 the private respondents. 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."**

22. 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."**

23. It is equally settled that the burden of proving the accusation always rests upon the appellant/complainant and even a single circumstance creating reasonable doubt entitles an accused to its benefit as a matter of right and not of grace. Reference may be made to **Tariq Pervaiz v. The State (1995 SCMR 1345), Muhammad Akram v. The State (2009 SCMR 230)** and **Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639).**

24. In the present case, the civil decrees and execution proceedings furnished a substantial basis for the appellant's claim of lawful possession

prior to the alleged occurrence, but they did not dispense with proof of the subsequent criminal act alleged on 25.04.2024. The absence of independent corroboration regarding the alleged entry, harvesting and removal of 150 maunds of wheat, lack of evidence regarding transportation or disposal of the crop, the fact that the official witnesses did not witness the occurrence and the failure of the evidence to distinctly relate the private respondents' possession to the precise 5-03 acres forming the subject matter of the complaint cumulatively created reasonable doubt regarding the allegation that all six private respondents forcibly dispossessed the appellant in the manner asserted.

25. Examined against the principles governing an appeal against acquittal, the findings recorded by the learned trial Court are supported by the material available on record and cannot be termed perverse, arbitrary, artificial, speculative or ridiculous. Merely because another view may possibly be taken upon reappraisal of the same evidence does not furnish a lawful basis for reversing an acquittal carrying a double presumption of innocence.

26. For the foregoing reasons, the appellant has failed to make out a case for interference with the impugned judgment. Consequently, this Criminal Acquittal Appeal is **dismissed**, and the judgment dated 03.01.2026 passed by the learned Additional Sessions Judge, Moro, is maintained.

JUDGE

Ahmad