

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Acquittal Appeal No. 277 of 2011

Present

Mr. Justice Aqeel Ahmed Abbasi

Mst. Shehnaz Naeem..... Appellant

Versus

Muhammad Nasir Khan & others Respondents

Date of hearing : 05.08.2015

Date of order : 05.08.2015

Mr. Rasheed Siddiqui, advocate for the appellant
Mr. Abrar Bukhari, advocate for the respondent No. 3.
Ms. Rahat Ahsan, Additional Prosecutor General.

O R D E R

Aqeel Ahmed Abbasi, J: Instant Acquittal Appeal filed under Section 417 Cr.P.C. against the order dated 29.03.2015 passed by the learned Illrd Additional Sessions Judge, Karachi Central in Criminal Petition No.87/2011 under Section 3, 4 and 5 of the Illegal Dispossession Act, 2005 filed by the appellant against respondent by lodging a complaint under Section 3 & 4 of the Illegal Dispossession Act, 2005 claiming therein that the appellant has been dispossessed from the lawful possession of leased Plot bearing No. A-420, Block A, North Nazimabad, Karachi without due course of law by the respondents on 28.08.2010.

2. Learned counsel for the appellant has argued that inspite of having brought on record the illegal act committed by the respondents, who dispossessed the appellant, namely, Mst, Shehnaz Naeem after the death of her husband, namely, Muhammad Naeem, who was living in House No.A-420, Block A, North Nazimabad, Karachi alongwith respondents on joint family basis. Learned Illrd Additional Sessions Judge, Karachi Central has dismissed the case of the appellant on the grounds that the matter between the parties in a nature of

civil dispute, therefore, no case of illegal dispossession is made out. Learned counsel for the appellant submitted that the husband of the appellant filed SMA No. 86/2006 in the High Court in respect of the subject property, however, it transpires that the respondent No.3 fabricated a forged and fictitious gift deed in respect of subject property in her favour vide Gift Deed dated 03.05.2965 and became the owner, whereafter, the husband of the appellant, namely, Muhammad Naeed died in the year 2008 and left behind the appellant as only surviving legal heir, who filed an application in the aforesaid SMA proceedings seeking permission to file afresh petition, which was granted. However, no fresh petition could be filed as the respondents intimated to the appellant that the legal heirs have agreed to pay Rs. 8,00,000/- to the appellant in respect of share of her husband, namely, Muhammad Naeem in the said property. According to learned counsel, a cheque was also issued by the respondent in favour of the appellant, which was bounced on presentation. Thereafter, an FIR No. 805/2010 was lodged under Section 489-F/34 PPC. Per learned counsel, the respondents felt annoyed and illegally dispossessed the appellant from the aforesaid house, hence committed act under Illegal Dispossession Act. However, through impugned order, the respondents have been acquitted and the petition filed under Section 3, 4 and 5 of the Illegal Dispossession Act, 2005 filed by the appellant has been dismissed, hence prayed that the impugned order may be set-aside and the matter may be remanded to the trial Court to decide the case afresh in accordance with law.

3. Conversely, learned counsel for the respondent No.3 has vehemently opposed the maintainability of instant Criminal Acquittal Appeal and submits that the complaint filed by the appellant under Illegal Dispossession Act, 2005 was without any cause of action or illegal basis as it was filed malafidely in order to pressurize the respondents to extract money from the respondents. Per learned counsel, from perusal of the complaint and the impugned order passed by the Illrd Additional Sessions Judge, Karachi Central, it has come on record that admittedly, the appellant has no title right or interest in the subject property i.e. House No. A-420, Block A, North Nazimabad, Karachi, which is owned and stand

mutated in the name of respondent No.3, whereas, the appellant has also filed a Civil Suit No.618/2010 for Declaration, Permanent Injunction, Partition, Cancellation of Documents and Damages, which is pending adjudication before the Civil Court. Learned counsel for the respondents submits that the appellant has instituted frivolous proceedings against the respondents without any cause of action or illegal entitlement over such property and has filed the criminal complaint under Illegal Dispossession Act against the respondents just to cause harassment and to blackmail them to extract money. Per learned counsel, none of the ingredient as required under the Illegal Dispossession Act to establish an offence against the respondents is available in the complaint filed by the appellant, whereas, no evidence or material was produced by the appellant before the IIIrd Additional Sessions Judge, Karachi Central in respect of her contention to establish the allegation of her illegally dispossession from the subject property, therefore, the learned trial Court after having examined all the material facts and circumstances of the case, has dismissed the aforesaid Criminal Petition, hence it is not required any interference by this Court, therefore, instant Criminal Acquittal Appeal may be dismissed with cost. It is further contended by the learned counsel for the respondent that it is tried principle of criminal justice system that the presumption of innocence against an accused at the stage on trial is doubled on his acquittal by the competent Court of jurisdiction, whereas, an acquittal appeal cannot be filed as a matter of right against such order of acquittal and the appellant as to demonstrate that the impugned order of acquittal suffers from some patent illegality or error of law. Per learned counsel, the appellant has miserably failed to point out to such error or illegality of the impugned order nor could referred any material or document to support the allegation as contained in the complaint filed by the appellant, therefore, instant Criminal Acquittal Appeal is liable to be dismissed with cost.

4. I have heard the learned counsel for the parties, perused the record with their assistance and examined the impugned order passed by the IIIrd Additional Sessions Judge, Karachi Central in the Criminal Petition No. 87/2011. From the record, it appears that the appellant has not been able to produce any evidence or material, which could establish her right or entitlement over subject property

i.e. A-420, Block A, North Nazimabad, Karachi, which stand mutated in the name of respondent No.3 pursuant to Gift Deed dated 03.05.1965. Respondent No.3 is the widow of late Aftah Ahmed Khan, who was the father of respondent No.1, namely, Muhammad Nasir Khan as well as Muhammad Naeem, husband of the appellant, who was issueless and died in the year 2008 leaving behind the appellant Mst. Shahnaz Naeem as one of the legal heirs. Admittedly, the appellant has already filed a Suit No.618/2010 in respect of same subject property seeking Declaration, Permanent Injunction, Partition, Cancellation of Documents and Damages, which is pending disposal before the competent Court of jurisdiction, hence entitlement of the appellant, if any, can be determined through evidence in accordance with law. No evidence or material has been produced by the appellant either before the trial Court or even before this Court, which could suggest that the appellant has some right or interest over the subject property, whereas, her possession in the property after the death of her husband, namely, Muhammad Naeem has also not been established through evidence. It appears that the ingredient as required while invoking the jurisdiction under Illegal Dispossession Act, 2005, could be established by the appellant before the learned IIIrd Additional Sessions Judge, Karachi Central, whereas, respondents No. 1 to 3, who are relatives were admittedly residing in the subject property, and cannot be considered as members of some land mafia involved in illegally occupying the property by dispossessing the appellant through force. Moreover, the presumption of innocence against an accused during trial increases once the accused is acquitted by the competent Court of jurisdiction.

5. In view of above admitted facts, and failure on the part of the appellant and his counsel to point out any error or illegality in the impugned order, instant Criminal Acquittal Appeal was dismissed vide short order dated 05.08.2015 and these are the reasons for such short order.

J U D G E

A.S.