

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No. S- 37 of 2019  
Cr. Appeal No. S- 57 of 2019  
Cr. Appeal No. S- 70 of 2019  
Cr. Appeal No. S- 71 of 2019

Date of hearing: 03.02.2020

Date of Judgment: 03.02.2020.

Appellants are present on bail.

Mr. Agha Ghulam Abbas, Advocate for appellants in Criminal Appeal No.S-70/2019.

Mr. Ali Ahmed @ Zaman Khan Patoli, Advocate for appellant in Criminal Appeal No.S-71/2019.

Counsel for appellants in Criminal Appeal Nos.37 & 57/2019 are called absent.

Mr. Imdad Ali Dahri, Advocate for complainant/respondent.

Ms. Rameshan Oad, A.P.G. for the State.

## **JUDGEMENT**

**ABDUL MAALIK GADDI, J-** By this common judgment, I intend to dispose of all the above captioned appeals together as the same arise out of one and common judgment dated 20.03.2019 passed by learned Additional Sessions Judge-II, Tando Muhammad Khan in I.D Complaint No.02/2015 (Re: Faiz Ahmed V/s Ahmed & others) which has been challenged by the appellants before this court, whereby the learned trial court after full dressed trial convicted and sentenced the appellants as stated in Point No.2 of the impugned judgment. For the sake of convenience, it would be proper to reproduce Point No.2 of the impugned judgment which reads as under:-

**“In view of my findings on point No.1, I have come to the conclusion that the accused are in illegal possession of the**

**disputed land and they have forcibly dispossessed the complainant from their agricultural land. Therefore, all the nine (09) accused present today are convicted and sentenced under Section 265-H(ii) Cr.P.C to undergo rigorous imprisonment for Eight (08) years for committing the offence under Section 3 & 4 of Illegal Dispossession Act, 2005. Their bail bonds stand cancelled and sureties discharged except the accused Meer Muhammad, who has not been appearing in the Court from 29.01.2019; despite coercive measures in terms of NBWs have been taken against him. The present accused be taken into custody and remanded to jail to serve out sentence awarded to them.**

**The accused Mir Muhammad Thebo has absconded hence NBWs shall continue to be issued against him, his bail bond stands forfeited with notice to his surety u/s 514 Cr.P.C, and case against him be kept on dormant file till his arrest.”**

2. Facts of the case as stated in the F.I.R are that the agricultural land was granted to the grandfather of the complainant namely Abdullah and his paternal aunt namely Mst. Asmatullah by the Barrage Department in the year, 1960-61 on installment basis. The mutation entries in the record of rights were made in the names of above named grantee. The T.O Form was issued in the year, 1995 in favour of the complainant party thus the land in question became Kabuli land.

On 19.05.2009 at 1600 hours the accused No.1, 5, 6 and 7 being duly armed with weapons came at Otaq of the complainant party situated on their lands in Deh Unarki, Taluka T.G Hyder, and on the show of weapons committed offence punishable U/S 17(3) of Enforcement of Hudood Ordinance, 1979 under Section 394, 504, 34 PPC and such F.I.R No.62 of 2009 was lodged. The accused No.1, 5, 6, and 7 illegally occupied the land and constructed their houses. The accused continued their illegal occupation along with accused No.2, 3, 8 to 15 without having any title. The accused No.1 claimed the land under the dispute as Asaish land within the 20 chains of village Theban Jo Goth. The learned EDO initiated Suo moto proceedings in respect of said land and dismissed the plea of accused No.1. The accused

No.1 also challenged the order of learned EDO before learned member LU Board of Revenue Sindh who vide order dated 20.03.2013 maintained the order of learned DC Tando Muhammad Khan. Thereafter, the accused No.1 to 8 filed C.P No.D-1017 of 2013 before Honourable High Court of Sindh and the same was also dismissed vide order dated 23.10.2013. The accused No.1 to 8 filed Review application No.31422 of 2013 before the Honourable High Court of Sindh and the same was also dismissed vide order dated 19.05.2014 during the pendency of petition No.1017 of 2013 the accused sold out the land of complainant party to the different persons under the garb of C.P No.D-1017 of 2013 through agreement of sale. The accused were convicted in criminal crime No.62 of 2009. The accused filed criminal appeal No.S-22 of 2014 in the Honourable High Court of Sindh, Hyderabad vide order dated 24.07.2014 the appeal was returned for presentation before Federal Shariat Court now the accused are serving sentences in jail. The accused No.9 to 15 filed Suit No.6 of 2014 against the complainant party and the learned Senior Civil Judge, Tando Muhammad Khan vide order dated 24.11.2014 rejected the plaint U/O VII Rule 11 CPC. The accused are not possessing any title document of land in dispute. The accused have no title to retain the possession of land in dispute. The prayer is made for taking legal action against the accused persons under Section 3(2) of Illegal Dispossession Act and the directions to be issued to the accused persons to restore the possession of disputed land to the complainant party.

3. After issuance of process, the accused Ahmed, Jan Muhammad, Khan Muhammad, Ghulam Hussain, Muhammad Tayab and Muhammad Buksh were appeared before the trial Court except

accused Shabir Ahmed whose case was kept on dormant file however, the remaining accused could not be served.

4. Thereafter charge against the accused namely 1. Ahmed, 2. Jan Muhammad, 3. Khan Muhammad, 4. Muhammad Ibrahim, 5. Ali Muhammad, 6. Mir Muhammad, 7. Ghulam Hussain, 8. Muhammad Tayab, 9. Muhammad Bux and 10. Shabir Ahmed was framed at Ex.5, to which they pleaded not guilty and claimed their trial vide their pleas at Ex.5/A to 5/J respectively.

5. At trial, the complainant Faiz Muhammad in order to prove his case has examined following witnesses:

1. PW-1. Abdul Kareem (Mukhtiarkar Tando Ghulam Hyder) examined at Ex.6. He produced spot inquiry at Ex.6/A, attested copy of entry No.3 of S.Nos.13263 & others at Ex.6/B and entry No.16 at Ex.6/C.
2. PW-2. Salahuddin (SHO PS Tando Ghulam Hyder) examined at Ex.7. He produced spot inquiry report at Ex.7/A.
3. PW-3 Complainant Faiz Ahmed examined at Ex.8.
4. PW-4 Ali Ahmed at Ex.9.

Thereafter, complainant closed his side at Ex.10.

6. Statements of accused were recorded U/S 342 Cr.P.C at Ex.11 to 20, wherein they denied the prosecution allegations and claimed their innocence. However, during recording of statement U/S 342 Cr.P.C accused Ahmed Thebo while responding to question No.4 stated that he would examine witnesses in his defence and submitted a list of DWs at Ex.11/A and then two DWs namely Shakeel Baig and Imran Gul were examined at Ex.21 and Ex.22.

7. At the very outset, learned counsel appearing for the appellants argued that the appellants are innocent and they have been falsely

involved in the case in hand; that the judgment passed by the trial court is against the law and facts; that learned trial court has erred in not appreciating the evidence on record; that there are material contradictions in the evidence prosecution witnesses; that prior to I.D Complaint, the complainant had also lodged an FIR bearing Crime No.62/2009 regarding the same incident allegedly occurred on 19.05.2019 and instant I.D Complaint was filed on 02.02.2015 after the delay of 06 years; that in FIR case the appellants were convicted for 05 years before the trial court on 28.01.2014 whereas on 17.12.2015, the appeal filed by the present appellant was allowed by Federal Shariat Court and no further acquittal appeal was preferred by the complainant before any competent forum thus according to learned counsel for appellants, said order attained finality. They lastly contended that the injured Soomar who allegedly received injuries at the hands of appellants has neither been examined nor his medical certificate has ever been produced before the trial court.

8. On the other hand, learned counsel for the complainant argued that the accused have not denied their possession over the land owned by complainant party; that version of the complainant has been fully corroborated by other witnesses; that the land in dispute is owned by complainant party and appellants are not holding any valid title document in their favour. On query, learned counsel for complainant admitted that names of the lady accused were deleted from the I.D. complaint on account of their being ladies and that injured Soomar was not examined before the trial court even I.D. complaint was filed after a delay of 06 years.

9. Learned A.P.G. in view of background of the case and in view of arguments advanced by learned counsel for the appellants, does not support the impugned judgment on the ground that injured Soomar who was the best witness, has not been examined by trial court either in FIR case or in I.D. Complaint which was filed after 06 years of the alleged incident and that learned trial judge has also not mentioned about the restoration of possession to be handed over to the complainant.

10. I have heard learned counsel for the parties and perused the entire material with their kind assistance.

11. From the perusal of record, it appears that firstly FIR No.62/2009 was registered at P.S. Tando Muhammad Khan by complainant Faiz Muhammad regarding the incident allegedly to have occurred on 19.05.2009 for offence u/s 17(3) Offence against Property (Enforcement of Hudood) Ordinance, 1979, 394, 504, 34 PPC in which present appellants faced the trial and after full dressed trial, they were convicted and sentenced by learned trial court for 05 years vide judgment dated 28.01.2014. Being aggrieved with the said judgment, they preferred appeal before the learned Federal Shariat Court which was allowed on 17.12.2015 and no further appeal against their acquittal has been filed by complainant party before any higher forum and the said order of their acquittal attained finality.

12. It appears that instant I.D. complaint has been filed on 02.02.2015 after the delay of about 06 years of lodging the FIR of same incident and in FIR it reveals that four persons were nominated namely Ahmed, Ibrahim, Ali Muhammad and Mir Muhammad whereas in Direct Complaint as per learned counsel for appellants number of

accused has been enhanced, out of whom one is absconder and four lady accused namely Mst. Rehmat, Mst. Zaibu, Mst. Siani and Mst. Jannat have been deleted by the complainant. It is surprising to note that when these ladies came at the place of incident alongwith male accused for illegal possession then why the complainant subsequently deleted their names from I.D complaint. This aspect of the case creates serious doubt in the case of complainant. It is also matter of record that injured Soomar who allegedly received injuries at the hands of accused persons has neither been examined in FIR case nor in I.D. Complaint case nor his medical certificate has been produced before the trial court during evidence to support the version of complainant.

13. It is the case of appellants that in the year 2000 appellant Ahmed and Ali Ahmed had filed a suit against the complainant party with regard to same subject matter which was ended into compromise on 11.10.2003. According to learned counsel for appellants, the appellants were in possession of the land in question at that time and still they are in possession of the same. Admittedly, instant I.D complaint has been filed after the delay of 06 years and no where it is mentioned in the impugned judgment that the possession of land in dispute be handed over to the complainant nor the complainant had challenged such portion of judgment by filing any application or cross appeal with regard to restoration of his possession over the subject property.

14. Per learned counsel for complainant one of co-accused Mst. Zaibu and others had filed F.C. Suit No.6/2014 for declaration and injunction with regard to same property and plaint was rejected on 24.11.2014 but it is also an admitted fact that said accused Mst. Zaibu has been deleted by complainant himself in I.D complaint proceedings

therefore, this contention of complainant carries no weight. It is the case of appellants that they are in possession of land in dispute since their forefathers and have never dispossessed the complainant. When confronted with learned counsel for complainant regarding non-examination of injured Soomor, he submitted that he was an aged person and not able to give evidence whereas P.W Ali Ahmed was not the eye witness of incident as he was not shown present at the time of incident. There is only evidence of complainant Faiz Muhammad which is not corroborated by any unimpeachable evidence and if the complainant has any title document he may file civil suit for declaration and possession of the landed property, if any.

15. It is also an admitted position that there are infirmities and lacunas with regard to subject property and the trial court has failed to mention anywhere regarding the restoration of possession of subject property to the complainant and he only awarded conviction to the appellants while remaining prayers of I.D complaint are silent.

16. Under these circumstances, false implication of appellants in this case with due deliberations and consultations on account of admitted enmity, cannot be ruled out. All these things create doubts in a prudent mind that the incident as alleged by the complainant in his I.D. Complaint has not occurred and it is well settled principle of law that even a single circumstance creating a reasonable doubt, the benefit of which, always goes in favour of accused, however, in the instant case there are material discrepancies and lacunas in the prosecution evidence. In this regard, reliance can be placed upon case of 'Tariq Parvez v. The State' [1995 SCMR 1345] wherein it has been held by Honourable Supreme Court of Pakistan that:



**"For giving benefit of doubt to appellant it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as matter of right".**

17. In the light of what has been discussed above and case law, I am of the considered view that the complainant has failed to prove his case against the appellants beyond any reasonable doubt, therefore, all the aforementioned four (04) appeals are hereby allowed, impugned judgment dated 20.03.2019 is set aside and the appellants are acquitted of the charge. The appellants are present on bail, their bail bonds stand cancelled and sureties discharged.

18. Before parting with this order, I would like to make it clear that the dispute between the parties admittedly is of civil in nature therefore, both the parties are at liberty to file any case / suit in respect of their claim, if they so desire and on filing such proceedings, the concerned court shall decide the same in accordance with law.

JUDGE

Tufail