

***JUDGMENT SHEET***

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Acquittal Appeal No.S-67 of 2021

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For orders on office objection.
2. For hearing of main case.

Date of hearing : 09.08.2021.  
Date of judgment : 09.08.2021.

Mr. Abdul Hameed Jamali, Advocate for appellant/complainant.  
Mr. Shahid Ahmed Shaikh, Additional P.G Sindh.

**J U D G M E N T**

**NAIMATULLAH PHULPOTO, J,-** Respondents / accused Ali Sher,

Jan Muhammad and Rasool Bux were tried by learned IIIrd Additional Sessions Judge, Shaheed Benazirabad in Sessions Case No.494 of 2019 for offences under Sections 3 and 4 of Illegal Dispossession Act, 2005. After full dressed trial, the respondents/accused were acquitted of the charges vide judgment dated 23.02.2021 mainly for the following reasons:-

14. The perusal of material available on record especially the evidence of PW-3 Mukhtiarkar (Revenue) it is also surfaced that originally the disputed area viz: 03-20 acres was given S.No.41, Deh 67 Nusrat which was the original position in terms of entry dated 29.09.1968 in village form-XV, There is also nothing on record to show that how such original S.No.41 (03-20) acres, Deh 67 Nusrat was converted into S.No.41/1, (03-20) acres of same Deh. In this regard the PW-3, in his cross examination, has deposed that prior to entry No.06 (Exh.05/A) there is no mention of S.No.41/1 of Deh 67 Nusrat, neither in the revenue record nor in Deh map. He also admitted that in Deh Map it is still S.No.41 only and ther is no S.No.41/1. The genuine position can be verified from Barrage Mukhtiarkar as to how they issued T.O Form in respect of S.No.41/1 in favour of Abdul Razzaque in the year 1998. He also admitted that on the ground and at the spot there is no other Survey Number in the name and shape of S.No.41/1, Deh 67 Nusrat. The area 03-20 acres which is available on the record and at the spot is one which was originally mentioned in Deh Map as S.No.41.

15. It is also noteworthy that the complainant has failed to produce original form-A as well as original T.O Form regarding grant of disputed S.No.41/1 in his name after cancellation of original grant to his father namely Khan Muhammad & others which included the same disputed area in the name as "S.No.41". The PW-3 in his cross-

examination, has admitted that as per entry NO.07 of village form XV Deh 67 Nusrat, the concerned Mukhtiarkar had ordered that the mutation entry in favour of Abdul Razzaque was not to be kept in the Revenue record without verification of genuineness of cancellation of previous grant & re-grant in the name of Abdul Razzaque & without holding Jalsa-e-Aam & confirmation of physical possession of the disputed survey number & the name of possessor thereof.

Hence, this criminal acquittal appeal has been filed by appellant / complainant.

Learned Advocate for appellant / complainant mainly argued that the trial Court has not appreciated the evidence adduced by the prosecution and this is the clear case of misreading and non-reading of evidence. It is also argued that finding of trial Court in respect of the property in question is not based upon the evidence. Lastly it is submitted that finding of acquittal recorded by the trial Court is speculative and calls for interference.

Learned Additional P.G present in Court in other cases waived notice and argued that the trial Court has rightly appreciated the evidence and the scope of appeal against acquittal is different from the scope of appeal against conviction. He further submitted that judgment of learned trial Court is based on sound reasons and requires no interference.

Heard learned Counsel for the parties and perused the impugned judgment as well as evidence available on record.

From perusal of the judgment, it appears that learned trial Court has acquitted the respondents / accused named above mainly for the reason that there is cloud over the title and occupation / possession of complainant Abdul Razzaque in respect of the disputed Survey No.41/1. Appellant / complainant in his evidence during cross-examination has admitted that one Mst. Rasheeda is the daughter of Ghulam Rasool and accused Ali Sher is husband of said Mst. Rasheeda. Appellant / complainant has failed to produce the original T.O Form before the learned trial Court. The complainant had also failed to produce positive evidence as to the occupation / possession over the disputed land, prior to the alleged offence. In fact,

the dispute between the parties appears to be of civil nature, which has been converted into criminal litigation. Findings of the trial Court reflect that the trial Court has assigned sound reasons for acquittal of respondents/accused, therefore, do not call for any interference by this Court. Moreover, this is acquittal appeal and scope of appeal against acquittal is narrower than the scope of appeal against conviction. In the case of *Muhammad Asghar & another v. the State* vide *PLD 1994 Supreme Court 301* it is held that;

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Interference in order of acquittal can only be made if the order of Court below is manifestly wrong or perverse or is based on the view of the evidence which no judicial officer would take, or the Court has misread the evidence or ignored important evidence or when non-interference will result in miscarriage of justice---Mere fact that the appellate or revisional Court forms a different opinion than that arrived at by Trial Court will not justify setting aside the order of acquittal---Due weight has to be given to the conclusion of the Trial Court--"

For the above stated reasons, this criminal acquittal appeal is without merit and is hereby dismissed.

JUDGE

Shahid