

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Crl. Acq. Appeal No. 557 of 2020.

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Date

Order with signature of Judge  
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1. For hearing of M.A. No. 11761 of 2020.
2. For hearing of main case.

**22<sup>nd</sup> February 2021**

Mr. Qaim Ali Memon, advocate for appellant.  
Mr. Siraj Ali Khan Chandio, Addl. P.G. Sindh.  
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At the outset, learned counsel for the appellant, inter alia, contends that appellant is owner of subject matter property as lease deed is in his favour; according to him there are many cases against respondents No.1 and 2; trial court failed to consider the evidence produced by the present appellant. Lastly he prayed for revdursal of acquittal of the respondent into conviction.

2. In contra, learned Addl. P. G Sindh has supported the impugned judgment as according to him it is civil disputes between grandfather and grandson and has nothing to do with the offence under Illegal Dispossession Act.

3. Heard learned counsel for the appellant as well as Addl. P.G. Sindh.

4. Since, it is an *appeal* thereby challenging acquittal by a competent court of law, hence at the outset, it would be relevant to reaffirm the well settled principle of *Criminal Administration of Justice* that '*in Criminal trial every person is innocent unless proven guilty and upon acquittal by a competent jurisdiction such presumption doubles*'. Such earned double presumption of *innocence* would not be disturbed unless and until it is established that impugned judgment was *prima facie* shocking, perverse and illegal thereby resulting into grave miscarriage of justice.

5. Keeping above settled proposition of law, it would be conducive to refer relevant paragraphs of the impugned judgment, which are that:-

"I have carefully gone through the record and perused the entire evidence of both sides brought on record. After perusal of record it appears that admittedly neither present accused dispossessed the complainant from the subject

property nor specific date of dispossession by present accused person mentioned in the complaint. In this regard I have taken guidance from the case law is held in 2018 YLR 41 Karachi that--- **Basic ingredients of complaint in terms of S. 3 of the Act were missing--Allegation of use of force for dispossession of the appellant/complainant from the premises in question was not mentioned anywhere in the complaint--Even date of dispossession was not given in the memo---**. Complainant was not in possession of suit plot for over twenty years as the plot was not demarcated--**Earlier complaint of complainant/appellant was dismissed and if he was aggrieved by the disposal of his earlier complaint, he should have filed appeal/revision---Filing a fresh complaint on the same facts was not permissible---Circumstances established that dispute, in the present case, of civil nature and could only be resolved in civil Court---** It is also held in 2016 P.Cr. L.J 809 (Islamabad) by lordship Mohsin Akhtar Kayani, J, that **complainant is under a lawful duty to prove all ingredients of S.3 of Illegal Dispossession Act, 2005---**.

It is not out of record to mention here that admittedly grandfather of the complainant namely Khair Muhammad prior filing of present complaint also filed civil suit against the father of applicant namely Ghulam Rasool, who is real son of Khair Muhammad in respect of property in question, even in his suit Khair Muhammad claimed as owner of property in question and one of prayer of his suit for cancellation of lease which is produced in present complain. The Nazir of the Court also filed some utilities bills of property in question which was also issued in the name of Mr. Khair Muhammad. On the other hand, accused claimed that property in question purchased from the grandfather of the applicant vide sale agreement dated 04-05-2016. The same version of accused also supported by PW Ali Sher who is grandson of Haji Khair Muhammad before the Court in his evidence as defense witness. The certified copies of Civil Court proceedings and some letters of Khair Muhammad (Grandfather of applicant) also reveals that he has some dispute with the applicant and his father in respect of property in question and father of applicant has also dispute with his other brothers in respect of property in question as well as other property."

6. Perusal of above in juxtaposition with pleas raised by learned counsel for the appellant reflects that this is not a case to reverse the findings of acquittal into conviction. It is evident from the record impugned judgment that record of civil court was produced before the trial court, according to which utility bills are in the name of Khair Muhammad and appellant is son of Ghulam Rasool, who is real son of Khair Muhammad. Hence, trial Court has rightly concluded that ingredients of forcible dispossession are lacking. Learned counsel for the appellant has failed to point out any illegality and irregularity committed

by the trial Court, in absence whereof an appeal against acquittal cannot sustain *even*. Accordingly, instant appeal being devoid of merits is dismissed alongwith pending application(s).

**J U D G E**

Sajid