

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

Cr. Acquittal Appeal No.S-245 of 2022

Appellant: Through Mr. Altaf Hussain Solangi, Advocate.
Respondents No 1 &2: Through Hameedullah Dahri, Advocate.
Respondent/State: Through Mr. Imran Ahmed Abbasi, Assistant
Prosecutor General, Sindh.
Date of hearing: 08.05.2023.
Date of judgment: 08.05.2023.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J.- Through this Judgment, I intend to decide the captioned Criminal Acquittal Appeal arising from the impugned Judgment dated 14.12.2022, passed by Additional Sessions Judge, Shahdadpur in Sessions Case No.455 2020 (Re: Muhammad Saleem versus Niamat Ali & another), whereby the private respondents were acquitted under Section 265-H (I) Cr.P.C.

2. Brief facts of the case are that Complainant Muhammad Saleem claims that he owns 4700 sq.ft. from plot Nos. 16, 17 and 18 situated in Shahdadpur Cooperative Housing Society vide registered sale deed dated 12.4.2019 and 22.8.2019; that on 07.10.2019 at about 1100 hours when he along with labour were working at his property, respondent Niamat along with his accomplices came with deadly weapons and forcibly occupied 3000 sq.ft. out of 4700 sq.ft. by dispossessing him. The Complainant went to police for registration of FIR but the concerned police refused to entertain his complaint; hence he filed direct complaint before the trial court under Illegal Dispossession Act; that copies of documents were supplied to respondents and charge was framed at Exh.02, to which they pleaded not guilty and claimed trial vide their pleas at Exh.3 to 4. In support of its case, the complainant examined himself at Exh.6. and

produced certified copies of registered sale deed dated 12.4.2019 and 22.8.2019 at Exh.6/A and Exh.6/B. PW-2 Qurban was examined at Exh.7. The statement of accused under Section 342 Cr.P.C. was recorded at Exhs.9 & 10 in which they denied the allegations of complainant and stated that they were/are innocent and they did not occupy the subject land. Respondent Niamat produced certified true copies of statements in F.C Suit No.139/2016, judgment and decree at Exh.9/A, 9/B, and 9/C. However, they neither examined themselves on oath under Section 340 Cr.P.C. nor led any evidence in defense. The trial court, after hearing the parties, acquitted the respondents vide order dated 14.12.2022, on the premise that the complainant failed to prove his case beyond any shadow of reasonable doubt. Relevant partition of the Judgment is reproduced as under:-

“POINT NO. 1

The complainant Muhammad Saleem has stated that he is the owner of 4700 Sq. ft. from plot No.16, 17, and 18 situated in Shahdadpur Cooperative Housing Society through a registered sale deed dated 12-4-2019 and 22-8-2019 but on 07-10-2019 at about 1100 hours when the complainant along with labor were working at his said property, the accused Niamat with the rifle, accused Sadique with a pistol and five unknown persons with lathies came there and forcibly occupied 3000 Sq. ft. out of 4700 Sq. ft. by dispossessing the complainant on gunpoint and they have constructed kacha houses thereon. PW Qurban and Abdul Razzaque reached at spot-on cries of the complainant and advised him to report him at PS then the complainant along with both witnesses went to PS Shahdadpur but with no result.

PW Qurban has stated that the accused persons while beating the complainant with lathies occupied all three plots of the complainant. PW Qurban further has stated that he, PW Abdul Razzaque, and about 40 other local people rescued the complainant. Whereas the complainant has not stated that he was beaten by the accused persons nor he has stated about other local persons gathered at the spot to rescue him. The complainant in his cross-examination has admitted that he had lodged FIR No.365/2019 on 07-10-2019 regarding the same incident against the same accused from which they have been acquitted by the learned Civil Judge & J.M-II Shahdadpur. The complainant in his cross-examination has denied that the accused are residing on plot No.155 of Shahdadpur Cooperative Housing Society Shahdadpur since about 40 years and on the basis of same the civil suit No.139/2016 was decreed in favor of the accused Niamat regarding his possession but PW Qurban in his cross-examination has admitted that the accused were known to him prior to the incident since 2018 as they were residing on some other plot of the same society. The complainant has not examined the other witness PW Abdul Razzaque. Further, the accused Niamat Ali has produced a certified copy of the judgment dated 28-9-2019 passed in F.C Suit No.139/2016 filed by the accused Niamat Ali against Nabi Bux and others which was partly decreed in favour of the accused Niamat Ali whereby the defendant were restrained from dispossessing the accused/plaintiff without due course of law from suit property i.e survey No.155 measuring 2860 Sq. ft. situated in the Housing Society Shahdadpur. The complainant in his cross-examination has admitted that he has not made previous owners/defendants in F.C Suit No.139/2016 as witnesses in this case.

In the circumstances discussed above and on the basis of material available on the record the complainant cannot be said able to prove beyond the shadow of a doubt that on 07/10/2019 the accused have forcibly occupied 3000 Sq. Ft. from plots of the complainant by dispossessing him at gunpoint as alleged. Accordingly, point No.1 is answered as not proved.

POINT NO.2.

In view of my finding on point No.1, it is established that the complainant has failed to prove his case against the present accused beyond any shadow of reasonable doubt, therefore, the present accused Niamat Ali @Namat S/o Khairuddin and Sadique S/o Sardar are the extended benefit of the doubt and acquitted from the charge U/s.265-H (i) Cr.P.C. Accused are present on bail, their bail bonds stand canceled and surety discharged.”

3. Mr. Altaf Hussain Solangi, counsel representing the appellant submits that the impugned Judgment is not sustainable under the law as there was sufficient evidence available on record against the private respondents but the trial Court brushed aside the same, more particularly, the private respondents were acquitted without assigning any valid reason; that the prosecution witnesses have not been examined; however, the trial Court without doing so has passed the impugned Judgment hurriedly, which is not sustainable; that at trial, Mukhtiarkar (Revenue) submitted report that the appellant is original owner of subject land; however, he was not examined by the trial court; that the impugned Judgment is based upon misreading and non-reading of evidence; that the trial Court has disbelieved strong evidence without assigning sound reasons and prayed for converting the acquittal of the respondents to the conviction.

4. Learned Additional Prosecutor General, Sindh assisted by the counsel for respondents has supported the impugned Judgment by submitting that there was no probability of private respondents to be convicted hence the Judgment of trial court is well reasoned, and speaking one hence needs not be interfered by this Court; that the appellant/complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. It is by now well settled that acquittal once granted to an accused cannot be recalled merely on the possibility of a contra view. Unless, the impugned view is found on the fringes of impossibility, resulting in miscarriage of justice, freedom cannot be

recalled; therefore, prays for dismissal of instant Criminal Acquittal Appeal.

5. I have heard the arguments of the parties and perused the record with their assistance.

6. The Mukhtiarkar has submitted following report in compliance with the order dated 10.04.2023:

“I have the honor to submit that the record of rights was checked thoroughly concerned village staff who after verifying the record and site has reported that according to entry NO. 717 of VF-II, residential plot Nos. 16 area 1875-00 sq.ft, 17 area 2293-00 sq. ft and 18 area 1650-00 sq.ft total area 5818-00 sq.ft were entered in the name of Shahdadpur Cooperative Housing Society Shahdadpur. Subsequently, Chairman Cooperative Housing Society Shahdadpur sold out plot No. 196 to one Nabi Bux S/o Mir Muhammad Dero through a registered sale deed vide entry No. 5151 of VF-II of Deh Shahdadpur.

According to entry No. 5152, plot No. 17 was sold out by Chairman Shahdadpur Cooperative Housing Society Shahdadpur to one Niaz Muhammad S/o Ali Bux Jiskani through a registered sale deed.

According to entry No. 5983 ibid plot No. 16 & 17 total area 4168-00 sq.ft were sold out by Niaz Muhammad & Nabi Bux to Khalid S/o Allah Dino Kaloi through a registered sale deed.

According to entry No. 10237 ibid, Khalid S/o Allah Dino Kaloi was sold out an area of 1100-00 sq.ft from plot No. 16 total area 1875-00 sq.ft to one Abdul Salaam and others through register sale deed.

According to entry No. 10600, an area of 775-00 sqft from plot No. 16 and plot No. 17 area 2293-00 sqft sold out by Khalid Kaloi to Muhammad Saleem S/o Muhammad Saifal Dal through register sale deed.

According to entry No. 5991, plot No. 18 area 1650-00 sq.ft sold out by Chairman Shahdadpur cooperative housing society to one Imran Ali & others through sale deed.

According to entry No. 10234, Imran Ali and others have sold out plot No. 18 area 1650-00 sqft to one Muhammad Saleem Dal through a registered sale deed.

On the site, an area of 3000-00 sq ft from plot No. 16, 17 & 18, is under the illegal occupation of Niamat, Sadiq, and other unknown persons, and 1700-00 sq.ft is under the occupation of the purchaser Muhammad Saleem Dal and the house of Muhammad Saleem is in the southern side of plot No. 16, 17 & 18 and in the northern side 30 feet road and compound wall of Insaf City existed and in eastern side plot No. 19, is situated and in the western side 30 feet road also exists on the site.

Such report of record of rights is submitted herewith for the favor of kind information.”

7. As per record, the complainant also lodged FIR No. 365/2019 against the private respondents regarding the same incident from which they have been acquitted by the Civil Judge and Judicial Magistrate-II, Shahdadpur. The private respondents filed F.C Suit No. 139/2016 against Nabi Bux and others (Previous Owners of the property) in the year 2016 which was not contested by its previous owners, hence the said suit was decreed to the extent that the plaintiff shall not be dispossessed without due course of law. The appellant has admitted in evidence that he did not mention specifically the possession of subject property that was delivered to him at the time of sale deed in his private complaint. Witness Qurban was examined who deposed that complainant Saleem had lodged FIR No. 365/2019 against the respondents regarding the same incident wherein his evidence was also recorded and the respondents were acquitted from the said case. He further deposed that the respondents were known to him before the incidents as they were residing on some other plot of the same society.

8. Coming to the merits of the case, it is expedient to have a look at the provision of Section 3 of Illegal Dispossession Act, 2005 which is reproduced below:-

3. Prevention of illegal possession of property, etc.- (1) No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property.

(2) Whoever contravenes the provisions of the subsection (1) shall, without prejudice to, any punishment to which he may be liable under any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provision of section 544-A of the Code.

9. It is clear from the reading of above provision that “No one” is supposed to enter into or grab any immovable property. The use of word “any” means even the “abandoned” property “without lawful authority to do so”. The words “control or occupy” and “owner or “occupier” used in Section 3 of the Dispossession Act apply to the status of appellant. The “OWNER” of the property in question is a private Institution. Therefore,

the owner being a juristic person cannot be dispossessed, however, its “control” defines who is in “occupation” of its property in terms of registered instrument creating the juristic person to authorize living beings to “control or occupy” the immovable property of the said juristic person. The use of words “lawful authority” refers to due process of law.

10. The Respondents admittedly have “no lawful authority” nor have they adopted any course of law. They have not produced a single authenticated document to legally justify their “control or occupation” of the subject property; besides their purported Sanad has not been declared an authentic document by the concerned department. In presence of aforesaid factual aspect of the case, prima-facie the possession of subject property cannot be justified. Merely obtaining decree to the extent of dispossession from the subject property without due course of law, without title documents cannot be considered as valid license to justify possession of property; therefore, if the possession of immovable property without title documents is illegal, that cannot be declared legal based on possessory rights on the property where the respondents are residing since long and due course of law be adopted by the parties so far as possession is concerned within reasonable time.

11. In view of the evidence led by the parties, including the report of Mukhtiarkar as discussed supra, the appellant has fully demonstrated that he was “lawful occupier” of the subject property as defined in Section 2(c) and (d) of Illegal Dispossession Act, 2005 and the respondents failed to justify their possession over the subject property through cogent evidence; therefore, the contention of counsel for Respondents that the appellant has failed to make out a case in terms of Section 2(c) and 2(d) of the Illegal Dispossession Act and acquittal order was rightly passed by the trial court which is devoid of any force.

12. The dicta laid down by the Supreme Court in the cases *Muhammad Akram and 9 others vs. Muhammad Yousuf and another* (2009 SCMR 1066) and *Mumtaz Hussain vs. Dr. Nasir Khan and others* (2010 SCMR 1254) resolves the controversy on the subject issue. The Supreme Court

has clearly and elaborately held that irrespective of any civil litigation between the parties once the case under Illegal Dispossession Act is proved the accused cannot escape punishment. Primarily, any act which entails civil liability under civil law as well as criminal penalty under criminal law, such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent to each other. Once the offense reported stands proved against the accused within the confines of the provisions of Illegal Dispossession Act, 2005 then he cannot escape from punishment on the ground that some civil litigation on the same issue is pending adjudication between the parties. No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of immovable property and then seek to thwart the criminal proceedings initiated against him under Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in the court of law. Therefore, irrespective of any civil litigation that may be pending in any Court, where an offense, as described in the Illegal Dispossession Act, 2005, has been committed, the proceedings under the said Act can be initiated and the same would be maintainable in law.

13. In the case in hand, the respondents have not even claimed any civil right to “control or occupy” the subject property based on the order passed by the Civil Court about the factum that respondents shall not be dispossessed without due course of law. Primarily, the decree obtained by the respondents will not come in the way of enforcement of the law where the original owner is deprived of legal / property rights as protected under Article 24 of the Constitution.

14. Prima-facie the most important factor of the case is the report of Mukhtiarkar. It appears that the necessary party to the proceedings was Mukhtiarkar whose evidence was material to reach just conclusion. The trial Court has, unfortunately, not at all bothered to call a report from him and /or examined him to ascertain the status of the subject land, which material evidence ought to have been brought on record. Mukhtiarkar shall also verify the documents/Sanad of the subject property as claimed by the

private respondents and produce the verification report before the trial court.

15. From the report of Mukhtiarkar which has been submitted, it appears that the title of appellant was clear but this aspect has not been taken care of by the trial court, I therefore allow this Acquittal Appeal, set aside the impugned Judgment and remand the case to the trial court with direction to summon Mukhtiarkar as court witness and with further direction to him to produce the title documents of the subject property and any other relevant document in his custody, allowing the parties to cross-examine him. This exercise shall be completed within one month from the date of communication of the order. Once the evidence of Mukhtiarkar is recorded the trial court shall hear the final arguments and decide the I.D Complaint on its own merits.

JUDGE

Karar_Hussain/PS*