

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

Criminal Appeal No.S-353 of 2011

25.05.2023

M/s. Syed Tarique Ahmed Shah and Saad Salman Ghani,
Advocate for the appellants.

Mr. Ravi Kumar, Advocate for respondent No.1.

Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

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JUDGMENT

AMJAD ALI SAHITO, J:- Through this Criminal Appeal the appellants have impugned judgment dated 12.11.2011, passed by learned 6th Additional Sessions Judge, Hyderabad, in Criminal Complaint No.39 of 2011 (*re-Jitendra vs. Hameed and another*) filed by respondent No.1 under the Illegal Dispossession Act, 2005, whereby the appellants have been convicted under section 3 (2) of Illegal Dispossession Act, 2005 and sentenced them to undergo imprisonment for ten (10) years and to pay fine of Rs.10000/- each and in case they failed to make payment of fine to further undergo imprisonment for one month. The SHO PS Market was directed to put complainant into possession of premises bearing C.S No.A/3 3762 admeasuring 10-02 sq. yards Ward-A, Market Garden Building, Market Quarter, Hyderabad within 07 days from the date hereof.

2. The facts in brief necessary for the disposal of instant criminal appeal are that complainant / respondent No.1 namely Jitendra filed Direct Complaint No.39 of 2011, before the Court of learned Sessions Judge, Hyderabad, which was made over to the Court of learned 6th Additional Sessions Judge, Hyderabad for its disposal. It is alleged that the complainant / respondent No.1 is co-owner of house situated on property bearing C.S No.A/3 2762 admeasuring 10-02 sq. yards Ward-A Market Garden Building, Market Quarters Hyderabad and is authorized by co-owner Shyam Prem Kavalram (brother) to invoke the

jurisdiction of this Court by filing the complaint against the accused who have committed offence u/s 3 & 4 of Illegal Dispossession Act, 2005. It is further alleged that complainant / respondent No.1 was put in vacant possession vide writ of possession dated 22.03.2011 through Bailiffs of learned 3rd Senior Civil Judge Hyderabad on 08.04.2011 however accused / appellants having no right, title or interest in the above property of respondent No.1 / complainant and other co-owner on 09.04.2010 at 01:00 a.m. without lawful authority and without consent of said respondent the accused along-with other culprits dispossessed the legal owners and entered / occupied the house in question. Thereafter, respondent No.1 made complaint to concerned P.S and FIR bearing Crime No.68 of 2011 was lodged, hence the respondent No.1 / complainant filed present complaint praying therein accused may be convicted under Illegal Dispossession Act 2005 and the possession of the property be restored to complainant party.

3. After bringing the direct complaint on regular file, the learned trial Court framed the formal charge against the appellants at Ex.02, to which they pleaded not guilty and claimed for trial vide their pleas recorded at Ex.02/A & 02/B, respectively.

4. The complainant Jitendra to prove his case, examined himself (Ex.3), he produced Extract from the property register card issued by City Surveyor Hyderabad, certified true copy of writ of possession alongwith letter issued for police aid, certified copy of memo of delivery of possession and its report at Ex.03/A to Ex.03/E and the side of complainant was closed vide order sheet dated 04.10.2011.

5. Appellants in their statements recorded under section 342 Cr.P.C at Ex.04 & 05 denied allegation by pleading their innocence. Appellant Hameed claimed to be tenant of respondent No.1 and produced Photostat copy of 4 money order coupons and 2 Photostat copies of payment receipt of Court. However, appellants did not examine themselves on oath or anyone in their defence.

6. The learned trial Court on evaluation of evidence so produced by the prosecution convicted and sentenced the appellants, as stated above.

7. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the complainant and the evidence which was adduced by the complainant at trial being inconsistent and doubtful has been believed by learned trial Court without lawful justification; that the appellants are neither land grabbers nor members of the Qabza Mafia, therefore, the provisions of Illegal Dispossession Act, 2005 are not applicable in the instant case; that the possession of the property in question was handed over to the complainant Jitendra in the year 2011 since then he is enjoying with the property; that appellant No.2 Abdul Khalid filed affidavit for himself and on behalf of his brother being co-appellant namely Hameed in which he has stated that neither there is any intention to occupy the subject property nor to file Civil Suit or criminal proceedings in future against the respondent No.1 / complainant. He has lastly prayed that the impugned judgment is liable to be set aside and the appellants may be acquitted from the charge.

8. Conversely, learned counsel for the complainant / respondent No.1 present in the earlier part of the day submitted that if the appellants file the affidavit and undertake that in future they will not occupy / possess the subject plot / property in question then it is accepted he has no objection for their acquittal similarly learned Assistant Prosecutor General, Sindh also raises no objection on the ground that learned counsel for respondent No.1 / complainant raised no objection.

9. I have heard the learned counsel for the appellants /accused, learned counsel for the complainant / respondent No.1 and learned Assistant Prosecutor General for the State as well as perused the record.

10. Since appellant No.2 Abdul Khalid has filed affidavit for himself and on behalf of his brother co-appellant No.1 Hameed who is reported to be unwell due to his surgery taken on record while the property in question has already been handed over to respondent No.1 / complainant Jitendra in the year 2011 and

thereafter the appellants have no concerned in such premises and further it is undertaken that in future appellants will not file any civil or criminal litigation against the respondent No.1 / complainant Jitendra in respect of subject plot / property. Further learned counsel for the respondent No.1 / complainant Jitendra also raises no objection if the appellants are acquitted from the charge.

11. It appears that admittedly the complainant is not eyewitness of the incident but allegedly he has been told the story of dispossession by his security guard Kamran that Shoaib sustained injury on his back during dispossession but both of them have not been examined at trial.

12. I have gone through the record and also the statement of the complainant. The question determinable before me is as to whether the facts and circumstances of the instant case do constitute the offence punishable under subsection (2) of section 3 of the Illegal Dispossession Act, 2005? The aforesaid provision of law having direct relevance in the instant case 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 owner 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 provisions of section 544 of the Code."

Now while discussing the evidence produced by the complainant before the learned Trial Court, I find that it is nowhere mentioned that the appellants belongs to land mafia, Qabza Group or property grabbers. It is also stated that father of appellants was tenant of complainant's father and after their expiry the tenancy devolved upon the legal heirs and after death of appellants' father appellant Hameed stopped to pay the rent consequently after initiating proceedings in respect of ejection from the subject plot the complainant succeeded to evict appellants. Thereafter, on 08.04.2011 bailiffs namely Iqbal, Arshad and Akhtar

proceeded along-with complainant for execution of writ of possession and accused vacated the house in question resultantly possession was handed over to complainant. It appears that after some days of taking possession of the subject premises the complainant filed instant complaint under Illegal Dispossession Act, 2005 but there is no evidence that the accused / appellants belonged to Qabza Group. Moreover, it is admitted by the complainant in his cross examination that ***“in the complaint I have not disclosed that Chowkidar Shoaib sustained injury on his back at the hands of accused... It is correct to suggest that I have not produced the agreement executed between me and Guard of company. For the last 03 years Chowkidar Shoaib was serving with me. It is correct to suggest that chowkidar can perform his duty and acts on my instructions.”*** Suffice to say that respondent No.1 / complainant made improvements in his evidence during trial as nowhere in the complaint is mentioned of injured Shoaib being his security guard.

13. Complainant has not stated a single word that the appellants belong to a Qabza Group and were involved in such activities, so it is the complainant side who has failed to establish that the appellants belong to Qabza Group or they were land grabbers. The complainant has not produced any evidence oral or documentary to establish that the appellants had the credentials or antecedents of being property grabbers so, it was a dispute between two individuals over immovable property so also the appellants do not belong to a class of property grabbers or Qabza Group hence no case was made out under section 3 of Illegal Dispossession Act. Reference is made to the judgment of a Full Bench of the Lahore High Court in Zahoor Ahmad and others v. The State and others (PLD 2007 Lahore 231) wherein it has been held that the Illegal Dispossession Act, 2005 was restricted in its scope and applicability only to those cases where a dispossession from immovable property has allegedly come about through the hands of a class or group of persons who could qualify as property grabbers/Qabza Groups/land mafia and the said Act was being invoked and utilized by the aggrieved persons against those who have credentials or antecedents being members of the Qabza Groups or land mafia. It was further held

that the Illegal Dispossession Act, 2005 has been found to be completely nugatory to its contents as well as objectives. The aforesaid view was upheld by this Court in the case of Mobashir Ahmad v. The State (PLD 2010 SC 665). In view of the case-law referred above, it is established that the said law is applicable only to those accused persons who have the credentials or antecedents of Qabza Group and are involved in illegal activities and belong to the gang of land grabbers or land mafia. In the case in hand it has been found by us that there is no evidence oral or documentary to establish that the appellants belong to the Qabza Group or land grabbers. Even otherwise no such allegation has been made against the appellants in the complaint filed by the respondent Jitendra.

14. Instant complaint was brought on record after calling report from SHO concerned but the reporting officer was not got examined by the private respondent / complainant at trial to establish his alleged illegal dispossession from the subject premises. Further, there is no discussion available in the impugned judgment as to what SHO is reported in his report in respect of alleged occupation of subject property. In that situation, no much reliance could be placed upon the report in absence of evidence of his author, hence when it was never safely established that appellants had been in illegal possession of property of private respondent then no conviction legally could sustain under section 3 of the Act. In the above circumstances I find that it was a dispute between two individuals over the tenancy of the property and the facts and circumstances of the case were not sufficient to hold the trial under section 3 of the Illegal Dispossession Act, 1995 against the appellants and the learned trial court illegally connected the appellants with the offence falling under section 3 of the Illegal Dispossession Act which has been made for special purposes and for special objects and had wrongly sentenced the appellants.

15. In view of what has been discussed above the instant criminal appeal is allowed. The impugned judgment dated 12.11.2011 passed by learned 6th Additional Sessions Judge, Hyderabad is set aside. The appellants Hameed and Abdul Khalid are acquitted from the charges. The appellants are present on

bail, their bail bonds stand cancelled and surety is discharged. Office is directed to return the surety papers to the surety in person after proper verification and identification as per rules and procedure.

JUDGE