

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.491 of 2021

Appellant : Hakim Ali through Mr. Zulfiqar Ali Qureshi,
advocate

Respondent No.1 : through Mr. Siraj Ali Khan Chandio, Additional
Prosecutor General Sindh

Respondent No.2&3: None appeared.

Dates of hearing : **25.05.2023**

Date of Judgment : **01.06.2023**

J U D G M E N T

AMJAD ALI BOHIO, J. The appellant has filed the above mentioned appeal against the order dated 10.07.2021, issued by the learned VIII-Additional Sessions Judge, Karachi. The order is related to a Complaint filed under Sections 3 and 4 of the Illegal Dispossession Act, 2005, with Criminal Complaint No. 566/2020. In the order, the respondents were acquitted under Section 265-K of the Criminal Procedure Code (Cr.P.C).

2. The brief facts of the complaint are that Hakim Ali married respondent No.2, Mst. Sakina Bibi, on 9.6.2019, as documented in the Nikaahnama. However, the complainant divorced respondent No.2 through a divorce deed dated 18.11.2019. After the divorce, at the request of respondent No.2, the complainant allowed her to stay in the disputed flat to complete her Iddat period (a waiting period after divorce). Once the Iddat period was over, respondent No.2 handed over possession of the ground floor to the complainant.

3. Subsequently, the complainant rented out the second floor to Mst. Sakina Bibi and her family. However, on 12.06.2020, respondent No.2, along with respondent No.2, prevented the tenant from accessing the second floor and unlawfully occupied the ground floor. Meanwhile, respondent No.2 occupied the top floor and forcibly dispossessed the complainant.

4. Following these events, respondent No.2 filed an FIR with Crime No.157/2020 against the complainant while retaining illegal and unlawful possession of the disputed property. As a result, the complainant has filed the present appeal and has also requested compensation under Section

544-A of the Criminal Procedure Code (Cr.P.C), as provided for in Section 3(2) of the Illegal Dispossession Act, 2005.

5. During the proceedings of the complaint, the respondents filed an application under Section 265-K of the Criminal Procedure Code (Cr.P.C). The appellant also submitted objections to the application. After considering the arguments presented by both parties' counsel, the respondents were acquitted in accordance with the impugned order.

6. In relation to the above mentioned appeal, a notice was issued to the learned Additional Prosecutor General. I have heard the arguments presented by the counsel for the appellant and the learned Additional Prosecutor General representing the State. Additionally, I have examined the material presented on record.

7. The counsel for the appellant argues that the respondent forcibly occupied the disputed property by preventing the tenants, Mst. Sakina Bibi and her family, from accessing the second floor on 12.06.2020. It is further contended that the appellant is the acknowledged owner of the disputed property and, therefore, has the rightful claim to seek possession of his own property. Since the appellant has divorced respondent No.2, she does not have the right to occupy or retain possession of the disputed property after the completion of the Iddat period. The trial Court failed to consider this crucial fact and erroneously categorized the dispute between the parties as of a civil nature. Therefore, the impugned judgment should be set aside. In support of these arguments, the counsel relies on the cases of Noorullah v. Muhammad Farrukh and 4 others (2023 YLR Note 9) and Adeel Zahoor Malik through Attorney and another v. Abdul Sattar Shaikh and 2 others (2023 YLR 187).

8. To consider the above contentions raised by learned counsel for the appellant, it is admitted fact that the appellant himself allow respondent Mst. Sakina Bibi to live with him after marriage but when the relation between them became strained, then the appellant himself allowed respondent Mst. Sakina Bibi to stay for Iddat period and it is well settled law that when the complainant himself inducted a person to occupy his property, then the provisions of Illegal Dispossession Act would not attract. The appellant may exhaust remedy available to him for seeking possession before competent Court of law because the appellant himself allowed the

respondent No.2 to reside in his house, therefore, the occupation of respondent No.2 would not be illegal or wrongful as held in the case of *Manzoor Ali and another v. the State and another* (2020 MLD 1138) [Sindh], which reveals as under:

“8. Now, I would revert to merits of the case, prima facie, it was an admitted position that the complainant himself had stated in his complaint that:

"accused are respectively his father and brother to whom the complainant had allowed to reside in his aforesaid house; The very admission of the complainant that accused (appellant herein) were allowed to reside was always sufficient to conclude that there had not been any illegal or wrongful entrance into or upon the disputed property hence offence under section 3(1) of the Act was never made out. A permission by 'owner' or 'occupier' to one to enter into or upon would dress such person with status of 'licensee' which status would provide protection, as provided by section 3(3) of the Act, to such person even. In such a situation no conviction can sustain under section 3(2) of the Act thus, the learned trial court judge wrongly awarded conviction to appellants under section 3(2) of the Act when undeniably there was no illegal entry into or upon disputed property rather admittedly it was the complainant himself who had allowed them (appellants) to enter into and reside in disputed property (house). Accordingly, conviction, so awarded by learned trial court judge under section 3(2) of the Act, was / is not sustainable.”

9. Consequently, to consider the above admitted position with regard allowing the respondent No.2 to occupy the house of appellant, the findings of trial Court requires no interference and the above appeal in hand is dismissed.

JUDGE