

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Acquittal Appeal No.S-66 of 2021

(Shaeek Ahmed Lodhi Pathan Vs. Khursheed & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing 06-05-2024.

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Mr. Manzoor Ali Chohan, advocate for the appellant.
 Syed Zaffar Ali Shah Bukhar, advocate for respondents No. 1,
 2 & 4.

Mr. Aftab Ahmed Shar, Additional P.G for the State along
 with Sajjad Ali KalwarMukhtiarkar (Estate) Sukkur and Faiq
 Ali Pitafi Assistant Gothabad Scheme Sukkur.

ORDER.

Adnan-ul-Karim Memon J:- The instant Criminal Acquittal Appeal has been preferred by appellant Shakeel Ahmed against the Judgment dated 26.5.2021 passed by the learned Additional Sessions Judge V Sukkur,in Sessions Case No 309 of 2019, arising out of Illegal Dispossession Complaint, which was allowed and after full-fledged trial the private respondents were acquitted from the charge on the ground that no case under the Illegal Dispossession Act 2005 was made out against them.An excerpt of the Judgment is reproduced as under:-

“20. From the perusal of contents of the complaint under Section 3 & 4 Illegal Dispossession Act, 2005 of complainant, his evidence and the evidence of other witnesses which are shows that the complainant has submitted in his complaint that the father of the complainant has issued "Sanad" in year 1987 for the purpose of resident Plot No.169, measuring 580 ft. situated in village Ali Wahan at Old National Highway, DehMandoDero, Taluka Rohri by the then Mukhtiarkar of Goth Abad Scheme Sukkur and he is legal heirs of the Mushtaque Ahmed. The plot complainant was consisting upon two shops and one residential house which became old condition whose rooms were destroyed by the complainant and started reconstruct over the plot. On 22.09.2018, complainant went a/w his witnesses over the plot and open the lock door and went inside the housesaw that the wall was broken from the side of accused house and the accused persons were taken away construction material and other articles. The evidence of the complainant is also shows on 22.09.2018, he went a/w his witnesses, the accused persons broken the walls and his construction material was missing. The complainant admitted in his cross-examination that his elders were residents of village Mari Mando

Dero and after that they were shifted to railway Station Rohri and he was born in Rohri. The complainant is residing near to Railway Station Rohri since his birth. The complainant has produced one "Sanad" bearing No.169 of 850 foot in proving his case. The contents of "Sanad" is shows that there is no Inward number is mentioned nor date of issuance is mentioned. The boundaries of "Sanad" are shows that from northern side there is wate supply, from southern side there is house of Bashir Ahmed and others, from eastern side there is a street and from western side there is house of Abdul Majeed. According to the boundaries of the "Sanad" the houses of accused persons are not situated behind the boundaries of "Sanad" of the complainant. The complainant of case has not produced any proof of residing his father at the above mentioned house nor produced any NIC/CNIC or any other tenancy agreement or any NIC/CNIC of any tenant which shows his tenance or his father was residing at above mentioned address. The record of the "Sanad" and Mukhtiarkar Goth Abad Scheme are shows that there is overwriting over the number 169 of the "Sanad" issued by the Mukhtiarkar Goth Abad Scheme. The contents of complaint is shows the plot was allotted at Old National Highway to the father of complainant in 1987 and after 1987 so many times, the Old National Highway was reconstructed and the houses, shops of the public were removed which were situated behind the Old National Highway. The complainant submitted that the material used in the construction were taken away by the accused persons but in this regard the complainant has not produced any proof/receipts of the material which was purchased by him. The evidence of the private witnesses namely Hafiz Haleemullah andMehmood Khan shows that they are residents of Newyard Colony Rohri and MadoDero, Rohri as the both witnesses are not residents of Village Ali SWahan nor they are independent witnesses. The evidence of the SHO is shows that he has not conducted the proper inquiry nor recorded thestatements of independent persons from the place of incident nor visitedthe place of incident by him, therefore, the evidence of SHO and his inquiry are not reliable. The evidence of the Mukhtiarkar is shows that he did not call the record of Goth Abad Scheme before submission of his report nor concerned Tapedar recorded the statements of any independent persons regarding the illegal occupation over the property of complainant. The evidence of the complainant and his witnesses are not shows that the accused persons belonged to any "Qabza Group" or "Land Mafia" or that they had the credentials or antecedents of being property grabbers. The accused persons denied the allegations of complainant in their statements under Section 342 CrPC and produced the Deh Form No.II which shows that the accused Muhammad Yaseen has allotted "Sanad" No.174 of 5664 Fts and they are residing jointly in their own property. It is settled principle of law that there need not to be many circumstances which create reasonable doubt in the prosecution story as even a single circumstances which create reasonable doubt as to guilt of the accused is sufficient for extending him such benefit. In case of Muhammad Nawaz versus The State (2016 SCMR 267) it was reaffirmed by the Honourable Court that it is better to acquit 10 guilty persons rather than convicting one innocent person. Therefore, in view of the above discussion, I feel no hesitation to hold that the complainant has not been able to prove his case, hence the point No.1 is answered in negative

Point No.2.

21. For the reasons recorded in point no.1, I acquit the accused namely Khursheed son of Jumo Khan, Saleem son of Jumo Khan, Muhammad Hussain alias Raju son of Muhammad Yameen, Rashid

alias Rado son of Muhammad Saleem and Muhammad Yameen son of Juma Khan, all by caste Soomro from the charge, under Section 265-H (i) Cr.P.C. They all are present on bail, their bail bonds stand cancelled and surety discharged.”

2. Appellant who is present in person along with his counsel has submitted that he has been illegally dispossessed by the private respondents/accused from his plot No.169 measuring 850 feet situated in Village Ali Wahan at old National High way Deh Mando Dero Taluks Rohri District Sukkur. He has further submitted that he approached the trial Court to restore his possession under the Illegal Dispossession Act, as his plot was illegally occupied by the private respondents. In support of his contention, he relied upon the documents attached to the memo of Criminal Acquittal Appeal and case law on the subject issue.

3. It appears from the record that the Mukhtiarkar inspected the site and reported that as per Register Form-II an entry No. 169 of an area 850 is existing in the name of Mushtaque Ahmed (father of the appellant) while an entry No. 174 of an area 5664 is existing in the name of respondent Muhammad Yameen, and found the respondents in possession over an area 2124 less to actual area 5664 of an entry No.174, however, the Appellant has no possession on site. Keeping view the evidence of the parties, the trial Court concluded that the case in hand did not fall within the ambit of Section 3 of the Illegal Dispossession Act, 2005 and acquitted the private respondents from the charge vide impugned judgment dated 26.5.2021.

5. At the outset I intend to see the rule position of the case first, primarily Section 3 of the said statute defines the offense there under. Section 4 stipulates that any "contravention of Section 3 shall be triable by the Court of Session on a complaint. It also provides that the offense under the Act shall be non-cognizable. Section 5 empowers the Court to direct the police to make an investigation. It is clear from Section 3 *ibid* that to constitute an offense there under the complaint must disclose the existence of both, an unlawful act (*actus reas*) and criminal intent (*mens rea*). Besides the Illegal 6 Dispossession Act, 2005 applied to the dispossession of immovable property only by property grabbers/Qabza Group/land mafia. A complaint under the Illegal Dispossession Act, 2005 can be entertained by a Court of Session only if some material exists showing involvement of the persons complained against in some previous activity connected with illegal dispossession from immovable property or the complaint demonstrates an

organized or calculated effort by some persons operating individually or in groups to grab by force or deceit property to which they have no lawful, ostensible or justifiable claim. In the case of an individual, it must be the manner of execution of his design that may expose him as a property grabber. Additionally, the Illegal Dispossession Act, 2005 does not apply to run-of-the-mill cases of alleged dispossession from immovable properties by ordinary persons having no credentials or antecedents of being property grabbers/Qabza Group/land mafia, i.e. cases of disputes over possession of immovable properties between co-owners or co-sharers, between landlords and tenants, between persons claiming possession based on inheritance, between persons vying for possession based on competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property. Further a complaint under the Illegal Dispossession Act, 2005 cannot be entertained where the matter of possession of the relevant property is being regulated by a civil or revenue Court. There is no cavil to the proposition that if the offence confines to the provisions of the Illegal Dispossession Act, 2005 then the land grabbers/Qabza Group/land mafia cannot escape punishment as no one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property. In principle, the Court empowered to take cognizance of an offence under the Act, is required to filter out those complaints which do not disclose the requisite criminal intent. Courts that have been authorized to try cases under the Act, 2005 thus have a responsibility to see that the persons named in the complaint have a case to answer before they are summoned to face trial, however, in the present case both the parties are at loggerhead and claim and counterclaims, in such a situation this court vide order dated 9.4.2024 directed Mukhtiarkar concerned to submit his report which reads as under:-

“2/- Pursuant to aforesaid Order, the undersigned (Mukhtiarkar Estate Sukkur) with the assistance of MrFareeqe Ali Pitafi the Assistant who presently the custodian of relevant record, examine the relevant record of both parties, inspected the site in presence of parties and hereby submit that; as per Register Form-II an entry No. 169 of an area 850 is existing in the name of Mushtaque Ahmed (father of the appellant) while an entry No. 174 of an area 5664 is existing in the name of respondent Muhammad Yameen, and on inspecting the site as well as mapping the site find out that the respondents are in possession over an area 2124 less to actual area 5664 of an entry No.174, the site was with congested residential house adjacent with old National Highway, proper location could not be determined in absence of technician and expert team of survey department. Further Submitted that Appellant have no possession on site.

3/- That a civil suit viz FCS No. 08 of 2020 Re: Mushtaque Ahmed and others Versus Rashid @ Rado and others, between both the parties in respect of disputed property is pending adjudication before the court of III-Senior Civil Judge Sukkur. (CTC of Written statement of the suit is submitted herewith for kind perusal and ready reference).

4/- It is further submitted that; as per record brought before the undersigned by the above named Assistant, it reveals that both entries are existing, and measurement/map is required first to determine the actual facts for that both the parties have ample chance to do the needful through civil suit already pending adjudication in the court of III Senior Civil Judge Sukkur, and at this stage, no case for taking action in terms of Section 154 Cr.P.C, is made out”

6. When confronted with the above legal position of the case to the parties, both the parties present in court, after making their brief submissions, agreed to disposal of the instant Acquittal Appeal in the terms that the learned III-Senior Civil Judge Sukkur shall decide the fate of Civil Suit No. 08 of 2020 Re: Mushtaque Ahmed and others Versus Rashid @ Rado and others, pending adjudication between the parties within two months and the fate of subject plot and possession thereof shall depend upon the final decision of the civil case, in the intervening period the civil court shall regulate the possession of the subject plot; the request seems to be reasonable and acceded to, without touching the merits of the case, therefore, this Acquittal Appeal is disposed of in the in the terms of statement made by them.

Judge

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