

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Criminal Acquittal Appeal No.S- 135 of 2021

1. For orders on MA 4452/2021.
2. For orders on office objection.
3. For orders on MA 4453/2021.
4. For hearing of main case.

Date of hearing: 09.08.2021.
Date of judgment: 09.08.2021.

Mr. Imran Ali Borano, Advocate for appellant.

Mr. Nazar Muhammad Memon, Additional Prosecutor General, Sindh waives notice.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondent / accused Dildar was tried by learned Vth Additional Sessions Judge, Hyderabad in Illegal Dispossession Complaint No.09 of 2020 for offences u/s 3 and 4 of Illegal Dispossession Act, 2005. Respondent was acquitted vide judgment dated 20.05.2021 mainly for the following reasons:-

“From the evidence and circumstances of the case it appears that the complainant is claiming the Plot No.D-55 old Survey No.10 measuring 900 Square Feet. He is the same plot for which proposed accused is claiming his possession as Plot No.D-50, Zeeshan Housing Society Qasimabad, Hyderabad. In Illegal Dispossession Act it is yet to be determined whether plot in question has been illegally encroached and dispossessed complainant or not. The title and exact number of property cannot be decided in Illegal Dispossession Act.

The complainant has failed to produce any document to prove that accused belongs to land grabbers or members of any mafia/group. Thus, necessary ingredients of section 3 of Illegal Dispossession Act 2005 are also lacking in this case. Civil dispute cannot be converted into criminal litigation through this complaint. The complainant is required to avail proper remedy. Thus, this point is answered as not proved.

POINT NO.2.

In view of above case law and discussion, the complainant failed to prove its case beyond the reasonable doubt, therefore, accused Dildar s/o Gul Muhammad Chandio is acquitted under Section 265-H(i) Cr.P.C. He is present on bail, his bails are cancelled and surety stands discharged.”

Hence, this criminal acquittal appeal has been filed by appellant / complainant.

Mr. Nazar Muhammad Memon, Additional P.G present in court in some other matters waives notice.

Learned advocate for appellant / complainant mainly argued that trial court misread the evidence and this is the clear case of non-reading of evidence. It is submitted that legal position has not been appreciated by the trial court in accordance with law. Lastly it is submitted that finding of acquittal recorded by the trial court is ridiculous.

Learned Additional P.G argued that the trial court rightly appreciated the evidence and this is the acquittal appeal. Scope of acquittal appeal is different from the scope of appeal against conviction. Learned Additional P.G further submitted that judgment of trial court is based on sound reasons and it requires no interference.

Heard learned counsel for the parties and perused the impugned judgment as well as evidence available on record.

It appears that the trial court acquitted the respondent Dildar for the reasons that complainant is claiming ownership of the Plot No.D-55 old Survey No.10 measuring 900 Square Feet without title documents. It is further mentioned in the impugned judgment that complainant failed to produce title document regarding the plot in question. It is also argued that there is dispute of civil nature between the parties which has been converted to criminal case. The trial court has assigned sound reasons for acquittal of respondent. Moreover, this is acquittal appeal and its` scope is narrow and limited. After acquittal, the respondent has earned the double presumption of his innocence. In the case of **Zaheer Din v. The State (1993 SCMR 1628)**, following guiding principles have been laid down for deciding an acquittal appeal in a criminal case:-

“However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly visualized from the cited and other cases-law on, the question of setting aside an acquittal by this Court. They are as follows:--

(2) *The acquittal will not carry the second presumption and will also*

thus lose the first one if on pints having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.

(3) In either case the well-known principles of reappraisal of evidence will have to be kept in view while examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observations of some higher principle as noted above and for no other reason.

(4) The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous. ”

For the above stated reasons, I have no hesitation to hold that neither the impugned judgment is artificial nor ridiculous. Hence, this criminal acquittal appeal is without merit and is hereby dismissed alongwith listed applications.

JUDGE

Tufail