

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No. S- 113 of 2024.

Criminal Appeal No. S- 114 of 2024.

Appellant : Haji Khan Mirani present in person in Cr. Appeal No.S- 113/2024.

Appellants : Mushtaque Ali Mirani and Nadeem Ali Mirani through Mr. Habibullah G. Ghouri, Advocate in Cr.Appeal No.S- 114 of 2024.

Respondent : The State through Mr. Aitbar Ali Bullo, D.P.G.

Date of hearing : 05.5.2025.

Date of Judgment : 14.5.2025.

J U D G M E N T

AMJAD ALI SAHITO-J.:- Through this common judgment I intend to dispose of these two criminal appeals filed by appellants who have assailed the judgment dated 06.12.2024 passed by learned Special Judge, Anti-corruption (Provincial) Larkana in Direct Complaint No.14 of 2016 Re: Aijaz Ahmed Bhabtti v. Mushtaque Ali Mirani and others for offence under Section 467, 468, 420 PPC R/W Section 5(2) of Prevention of Corruption Act 1947 (II of 1947), whereby appellants have been convicted and sentenced as under:

“ In view of the above discussion, I am of the view that the complainant has successfully proved the charge against accused persons beyond any reasonable doubt, therefore, accused Mushtaque Ali S/o Muhammad Uris Mirani, Nadeem Ali S/o Mushtaque Ali Mirani and Haji Khan S/o Shahbaz Dino Mirani are convicted U/s 245 (ii) Cr.P.C. Accused are sentenced for committing offence

punishable u/s 476 PPCR/w Section 5(2) of Prevention of Corruption Act-II of 1947 to suffer Rigorous Imprisonment for the period of Five (05) years and to pay fine Rs.50000/= for the offence punishable U/s 467 P.P.C. r/w Sec: 5(2) Act-II of 1947, and in case of default in payment of fine, they shall further suffer S.I for the period of (Six months) more. Accused are further sentenced for committing offence punishable u/s 468 PPC r/w Sec: 5(2) of Prevention of Corruption Act-II of 1947 to suffer Rigorous Imprisonment for the period of Three (03) years and to pay fine Rs.30000/= each for the offence punishable U/s 468 P.P.C. r/w Sec: 5(2) Act-II of 1947, and in case of default in payment of fine they shall further suffer S.I for period of Three (03) months more. Accused are further sentenced for committing offence punishable u/s 420 PP Cr/w Sec: 5(2) of Prevention of Corruption Act-II of 1947 to suffer Rigorous Imprisonment for the period of Three (03) years and to pay fine Rs.30000/= and in case of default of in payment of fine they shall further suffer S.I for the period of three (03) months more. All the above sentences of above named accused persons shall run concurrently. Benefit of Section 382-B Cr.P.C is extended to them.”

2. Brief facts of Direct Complaint No.14 of 2019 are that Father of complainant late Abdul Razaque Bhatti had purchased houses No. 128 and 129 Ward-A Naudero Town on 30.6.1960 vide transfer order at page No. 144 pages No.CSC-4-5 and he had obtained true copy of the PTO on 9.5.2008 issued by the District Officer Revenue and Estate Larkana and now the Deputy Commissioner/ Collector Larkana and the Mukhtiarkar Ratodero supplied true copy of Deh Form No. II vide entry No.76 dated 13.10.2009 showing ownership of his father and obtained true copy of Deh Form-II showing entry No.76 dated 13.10.2009 in the name of his father. It is further alleged that father of accused No. 1 who was residing adjacent to the house No.128 and 129 and later on accused No.1 managed to get illegal mutated, ownership/title, fraudulently of same property in his name and was trying to sell the same to one Hindu Mithomal of Naudero and got heavy amount from him and when Mithomal came to know about the original ownership of property being conscientious, he met with him and showed him fake entry No. 162 Deh form No. II showing purchased by accused No.1 from his father during the year 1990 for Rs.50,000/-. It is alleged that he made complaint to the Deputy Commissioner Larkana for cancellation of fake entry, restoration of original and action against delinquents,

inspite of repeated summons by the Court the accused No.1 and his father willfully failed to attend the court even for single day being notorious and influential and on last date of hearing only son of accused No. 1 namely Faisal Meerani attended the Court and repeated same vague version that his father (accused No.1) had purchased house No. 128 from his father during 1990 for an amount of Rs.5000/- vide entry No. 162 Deh form No. II and on the date of hearing the complainant submitted death certificate of his father showing date of death on 14.3.1989 issued by NADRA and certificate issued by Chief Officer District Council Larkana and after verifying the relevant record Deputy Collector cancelled fake entries and restored original and further ordered for taking disciplinary as well as criminal action against the accused. It is further alleged that during pendency of complaint before Collector Larkana he came to know that accused No.1 is changing the boundaries of two houses from inner side and intending to sale the house to his son Nadeem to create multiplicity of the litigation, he vide his applications dated 31.8.2015 and 23.9.2015 reported the fact to the court of learned Deputy Commissioner Larkana and learned Deputy Commissioner Larkana vide his order dated 01.07.2015 directed Assistant Commissioner Ratodero and Sub-Registrar Larkana that any transaction is barred on above property till matter is decided.

3. It is further alleged that in pursuant to the order of Collector Larkana the direct complaint No.11/2016 was filed against the accused No.01, his father, Mukhtiarkar Ratodero and Tapedar Naudero which was admitted and at present all accused are on bail, and accused No.01 and his father have filed bail applications wherein they have sworn affidavits by falsifying their own previous version of fake entry No.162 by saying that father of accused No.01 namely Muhammad Uris purchased house from his younger brother Ayaz Ali s/o Late Abdul Razzaque Bhatti during 1990. It is further alleged that Mukhtiarkar Ratodero in his report dated 22.11.2016 clearly reported that the revenue record has been verified, which clearly shows that the ownership of the said property lies with his father vide entry No.76 of Deh Form-II Deh Naudero. It is also alleged that Mukhtiarkar Ratodero on 26.9.2018 issued document of Deh Form No.II Naudero showing entry No.76 in which the houses No. 127 and 128 are still in the name of father of complainant up-to 2018,

inspite of pending two criminal cases in the Honourable Court and one case of illegal Dispossession Act 2005 against accused No.01 and his father wherein they both are on bail, in violation of the order of Deputy Commissioner, Larkana the accused No.1 being fraudy has sold out the house No.128 Naudero to his son Nadeem, showing previous dates through registered sale deed dated: 28.11.2014, but in registered sale deed there is mention of only one house but the accused No.1 and 2 in consultation with each other and by changing internal boundaries have illegally occupied two house Nos. 128 and 129 and sale deed is based on the fake entry No. 162, Deh and Tapo Naudero, which is on oral statement and there is no any entry in the revenue record up-till now, and accused No.4 who is stamp vender at Ratodero is caste fellow and relative of accused No.1 and 2 who has prepared false record of stamp paper only on Rs. 100/- and shown two witnesses namely Sahab Khan Bhutto and Nadir Hussain Bhutto whose signatures bears no CNIC numbers. He further argued that the houses are situated in the heart of Naudero Town, on corner side which are Worth rupees crores, the accused No.1 through fraud by fake entry No. 162 shown to be purchased from the father of complainant during year 1990 for Rs.50,000/- but he during 2004 sold the same property to his son in meager amount of Rs.20,000/- only which is the height of fraud. It is further alleged that the sale deed is not countersigned by Assistant Commissioner or Mukhtiarkar Ratodero and the signature of the Tapedar shown in that is fake as he was not alive during 2014 and passed away on 18.1.2011 which is quite evident from the report dated: 20.1.2011 submitted by the Mukhtiarkar Ratodero to the Executive District Officer Revenue Larkana, and the sale certificate (Fard) was issued on 5.8.2010 and Sub-Registrar received papers on 2.11.2011 and adjourned for verification and after long period of about four years admitted for registration the fraud is self explanatory and accused No.3 being responsible officer and fully aware of fraud etc and inspite of clear order of learned Deputy Commissioner Larkana not to transact, has prepared false registered sale deed record which in fact paved a way for second fraud hence the accused are involved in such fraud, hence complainant filed direct complaint.

4. After receiving the Direct Complaint by learned trial Court/Special Judge, anti-corruption (Provincial), Larkana, the

statement of complainant was recorded under Section 200 Cr.P.C and then the statement under Section 202 Cr.P.C of complainant's witnesses was recorded during the preliminary enquiry. Thereafter the Direct complaint was registered against the accused persons named above, and Bailable Warrants were issued against the accused person.

5. Formal charge against the accused persons named above was framed at Exh.03, to which they pleaded not guilty and claimed for trial vide their pleas at Exh.3/A to 3-D.

6. In order to prove its case complainant examined himself at Exh: 6 who produced copy of PTO at Exh:6/A, entry No.76 at Exh:6/B, copy of entry No.162 at Exh:6/C, copy of his application at Exh:6/D true copy of order dated 23.2.2016 of Deputy Commissioner at Exh:6/E, copies of three applications at Exh:6/F1 to ExH: 6/F3, Photostat copy of sale deed at Exh:6/G, attested copy of entry No.162 at Exh:6/H, copy of report of Mukhtiarkar at Exh.6/I, Photostat copy of entry No.76 at Exh.6/J, copies of affidavits at Exh.6/K and Exh.6/L, copy of deposition of Mitho Mal at Exh.6/M, attested Photostat copy of report of Mukhtiarkar at Exh.6/N, copy of statement u/s 342 Cr.P.C at Exh.6/O, attested copy of order at Exh.6/P, copy of judgment of Civil Appeal at Exh.6/Q, attested copy of judgment of direct complaint at Exh.6/R, attested copy of sale deed at Exh.6/S, two photographs of houses at Exh.6/T and Exh.6/U, copies of two applications addressed to the Deputy Commissioner at Exh.6/V, thereafter, Complainant has closed his side of evidence vide statement as Ex.7.

7. It is also pertinent to mention here that after closing side of complainant accused Farman Ali jumped bail, hence NBW was issued against him and proclamation u/s 87 and 88 Cr.P.C against him was issued and accused Farman Ali was declared as proclaimed offender.

8. The statement of accused Mushtaque Ahmed U/s 342 Cr.P.C. was recorded as Exh.12, who produced certified copy of judgment of Sessions Case No.32/2017 at Exh.12/A, certified copy of judgment of Sessions Case No.35/2019 at Exh.12/B and copy of memo of Civil Revision No. 102/2019 at Exh. 12/C, statement of accused Nadeem Ali was recorded at Exh.13, statement of accused

Haji Khan was recorded at Exh. 14. All accused persons denied the allegation of complainant and claimed to be innocent and falsely been involved due to enmity. However, they did not examine on oath or any evidence in their defence.

9. On conclusion of trial, and after hearing both parties, learned trial Court convicted and sentenced the appellants under impugned judgment dated 06.12.2024, as stated above which is challenged by appellants in these appeals.

10. Learned counsel for the appellants Mushtaque Ali and Nadeem Ali mainly contended that the evidence adduced by the complainant at the trial was insufficient to warrant conviction of the appellants and learned trial Court failed to properly assess and evaluate evidence brought on record; learned trial failed to consider the inordinate and shocking delay of more than 20 years in filing the Direct Complaint for which no plausible explanation was furnished by complainant; complainant had filed Direct Complaint No.11 of 2016 for offence under Sections 467, 468 and 420 PPC R/W Section 5(2) of Prevention of Corruption Act 1947 before Special Judge Anticorruption Larkana against appellant No.1 Mushtaque Ali Mirani and others including revenue officials in respect of same property alleging transfer of the same in which they were convicted and sentenced by the trial Court which challenged before this Court in Cr.Appeals No.S-21 and S-22 of 2023, hence filing instant Direct Complaint against appellant No.1 amount to double jeopardy as well as violation of section 403 Cr.P.C; prior to instant Direct Complaint, complainant had filed application under Illegal Dispossession Act twice which stood dismissed by learned trial Court while holding matter pertains to purely of civil nature; it is pertinent to note that out of appellants in Cr.Appeal No.21 of 2023, Appellant Sher Muhammad who was Tapedar, by now retired, was posted as Tapedar in Revenue Department Larkana on 18.7.2013 viz. after 13 years of alleged transaction of sale; besides in 1990 neither appellant Niaz Ali was Mukhtiarkar of Taluka Ratodero nor Sher Dil was Tapedar and neither it is alleged anywhere in Direct Complaint No.11 of 2016 that they kept any entry, hence the very found of claim of complainant stand no where creating serious doubt into the veracity of present prosecution case also; father of complainant admittedly died in

hospital at Hyderabad but no death certificate from such hospital was produced by the complainant at the trial even complainant failed to provide any proof with regard to death of his father from his service record who was retired Head Master in Education Department; besides, per complainant his father died in the year 1989 and in cross examination he admitted that entry of death certificate was kept in revenue record after delay of 29 years despite the fact the complainant and his two other brothers being well known advocates are well education, yet they did not maintain the entry regarding death of their father in time; complainant himself is an enrolled advocate since 1985, even if for the sake of argument it is taken that transaction between accused and his father was false and fraudulent, as to why other legal heirs kept silent for more than 25 years and no effort was made by complainant despite being advocate to get back the possession through legal process; complainant himself deposed that his remaining half family had shifted in the year 1994/95 from Naudero, therefore, in order to establish his possession he should have produced electricity bills or Sui Gas bills which in fact stand in the name of appellant Mushtaque Ali; it is also pertinent to point out that P.W Mithomal did not support case of the complainant at trial and he had given contradictory statement to the version of complainant; complainant deposed in his evidence at trial that Hindu Mithomal met him in the first week of May 2015 at his house then both went to Naudero but it is contradicted by Mithomal who stated that he met complainant at High Court where he told him that he is owner of said property; besides, it is pertinent to point out that P.W Mithomal in his chief recorded in Direct Complaint No.11/20216 stated that he purchased the property in dispute from appellant Mushtaque Ahmed through verbal transaction and paid him total 14,00,000/= but he failed to execute sale deed in his favour rather he filed petition against him/Mithomal in which he engaged complainant Aijaz Ahmed Bhatti as his advocate before High Court and later said petition was withdrawn by Mushtaque Ahmed and then in the year 2015 it was informed by complainant to him that he is owner of said property, which factum clearly suggests that claim of complainant over property in dispute was after thought. It is also pertinent to point that complainant filed a civil suit in which revenue officials were also summoned who produced documents whereby it was surfaced that in fact the subject property was part of school in 1951 and it was

never allotted to the father of complainant namely Abdul Razak, who was Head Master of the School, hence it can not be excluded beyond consideration that very claim of complainant is based on forged documents and woke up for his so called right after his nephew was posted as Additional Commissioner Larkana which also creates doubt. Learned counsel argued that in fact learned trial Court failed to consider that at the most it was case of civil nature and no criminal liability could be fixed against the accused in absence of judgment by Civil Court declaring the sale transaction between accused and father of complainant as illegal more particularly when complaint under Sections 3, 4, 7 and 8 of Illegal Dispossession Act 2005 filed by the complainant against appellant No.1 and others was dismissed vide judgment dated 21.12.2022 by learned IVth Additional Sessions Judge, Larkana while holding that grievance of complainant is purely of civil nature. Per grounds taken by Appellant Haji Khan, who is simply a stamp vender, in his appeal, complainant did not well about sale deed but did not implead him as accused in first Direct Complainant No.11 of 2016 and dragged him in second Direct Complainant No.14 of 2019 with malafide and ulterior motives; that being stamp vender, his duty was confined only to write sale deed and he has no authority to register the sale deed or any document, hence he has nothing to do with the alleged forgery in the revenue record or false registration of sale deed; complainant claimed the said property was owned by his father but none from other legal heirs/brothers of complainant came up to support his claim in Court despite they are alive and residing within local premises of Larkana and the sole witness of complainant Mithomal also did not support his version, therefore, prosecution case. On all these scores, it is prayed by the appellants that impugned judgment passed by trial Court is bad on facts and law, hence liable to be set aside and accused/appellants may be acquitted of the criminal charge.

11. Complainant while repeating the assertions made in direct complaint opposed these appeals and supported impugned judgment. However, learned Deputy Prosecutor General half heartedly supported the impugned judgment.

12. I have heard the learned counsel for the respective parties and perused the record with their assistance.

13. It is an admitted fact that the complainant, Mr. Aijaz Ali Bhatti, who is a practicing Advocate and a retired government servant. Prior to filing instant Direct Complaint No.14 of 2016 against present appellants/accused Haji Khan, Mushtaque Ali Mirani and Nadeem Ali Mirani, complainant had filed another Direct Complaint No.11 of 2016 Re: Aijaz Ahmed Bhatti v. Muhammad Urs and others filed by him in the same subject matter against Niaz Ali Siyal and Sher Muhammad, Mukhtiarkar and Tapedar respectively, as well as Mushtaque Ali Mirani, private beneficiary of same subject matter, before learned trial Court Court/Learned Special Judge, Anti-corruption [Provincial] Larkana wherein on conclusion of trial and after hearing learned counsel for the parties, learned trial Court passed judgment dated 09.3.2023 whereby said accused/appellants were convicted and sentenced vide judgment dated 09.3.2023 who challenged the said judgment in Cr. Appeals No.S- 21 and 22 of 2023 before this Court and after perusal of record and hearing learned counsel for the parties, this Court has passed judgment dated 13.5.2025 whereby impugned judgment dated 09.3.2023 passed by trial Court in above Direct Complaint No.11 of 2016 has been set aside and the said appellants have been acquitted of the charge. It is imperative to reproduce the relevant paras of judgment dated 13.5.2025 passed by this Court in Cr.Appeals No.S-21 and 22 of 2023, which read as under:

“19. It is an admitted fact that the complainant, Mr. Aijaz Ali Bhatti, who is a practicing Advocate and a retired government servant, filed the complaint after an inordinate delay of approximately twenty-six (26) years from the date of the alleged incident. No satisfactory or plausible explanation for such prolonged delay has been offered by the complainant.

20. The complainant asserts that his late father, Abdul Razak Bhatti, had purchased a property bearing House Nos. 128 and 129, situated in Ward ‘A’, Naudero, Taluka Ratodero, on 30.06.1967. He alleges that the accused unlawfully occupied the said premises by demolishing a boundary wall. Conversely, the appellant, Mr. Mushtaq Ali, claims to have been in

continuous and peaceful possession of the subject property since 1990, a period extending over three and a half decades. He resides therein with his family. It is further contended that the complainant remained silent for nearly thirty (30) years and only initiated litigation after his retirement from the Forest Department, upon entering the legal profession. The appellant asserts that the complainant manipulated the death certificate of his father in the year 2015 in order to support his belated claim.

From a bare perusal of the direct complaint, it is evident that the complainant has failed to specify the exact date or time when the alleged trespass or illegal occupation took place. During the course of proceedings, when the complainant/Advocate Mr. Aijaz Ali Bhatti was questioned regarding any evidence of his prior residence at the disputed premises, including utility bills such as those for electricity, gas, or water, he conceded that no such documents were in his possession. He nonetheless maintained that the utility records continued to bear the name of his late father.

21. Learned counsel for the appellant has submitted that the property in question was, in fact, purchased by the appellant, Mr. Mushtaq Ali, from the complainant's father in the year 1990, and possession was lawfully delivered to him at that time. Since then, he has been residing there uninterruptedly with his family.

22. In examination-in-chief the complainant has produced death certificate of his father issued by NADRA, wherein the father of complainant was passed on 14.03.1989. The complainant was well educated person and he did not bother to approach before the competent forum for the possession of the said house nor moved any application to the any official but he has started litigation in the year 2015.

23. PW-2 Mithumal has deposed that he has purchased house from Mushtaq Ali Mirani area of about 1270 in the year 2011 in the sum of Rs.16,00,000/-. He had paid Rs.14,00,000/- to Mushtaq Ali/appellant and after passing of sometime, he took amount Rs.2,00,000/- to Mushtaq Ali and demanded possession of the property to which he refused so also he refused to return amount of Rs.14,00,000/- to him/PW Mithumal. The Mithumal came to the Sessions Court Larkana for engaging an advocate, where the complainant/advocate Aijaz Ali Bhatti met with him and told him that he will get return Rs.14,00,000/- from Mushtaq Ali to him and further asked him to give evidence in his support. The complainant Aijaz Ali Bhatti brought him at Court of

Anti-Corruption Court Larkana and obtained his signature on the affidavit showing that Mushtaq Ali is residing in the said house for about 8/9 years. He has further deposed that the complainant Aijaz Ali asked him to give the evidence that Mushtaq Ali is residing in the said house for 8/9 years.

24. In cross examination he admitted that ***“it is correct to suggest that Mushtaq Ali is residing as by neighbourhood since long. I do not know whether Mushtaq Ali is residing with him as neighbor since 2020/21 years. It is incorrect to suggest that Aijaz Ali Batti filed a Civil suit for recovery of Rs.16,00,000/- after my earlier evidence. I can produce the documents which will proof that I had purchased the house from Mushtaq Ali. It is correct to suggest that I had not produce the purchased documents in my earlier evidence”***.

25. The complainant asserts that the subject property was purchased on 30.06.1960. However, the certified true copy of the relevant document evidencing such transaction was obtained only on 09.05.2008. Learned counsel for the appellant, Mr. Mushtaq Ali, contends that following the purchase of the property, the appellant took up residence therein. It is further submitted that the appellant was unaware of any entry purportedly maintained in the revenue record by the complainant's deceased father.

26. In his examination-in-chief, the complainant deposed that the accused, Mr. Mushtaq Ali, along with his sons, repeatedly approached and requested him to sell the subject property. Upon his refusal stating that the house was ancestral in nature, the accused allegedly became displeased. However, no corroborative evidence has been placed on record to support the assertion that the complainant was in possession of the property in question.

27. During his evidence, the complainant further deposed that the accused unlawfully entered the premises by demolishing the adjoining wall without his knowledge or consent, and thereafter attempted to sell the house to one Mr. Mithumal. The complainant stated that this information was relayed to him by a neighbor. However, he failed to produce any witness before the trial court to substantiate his claim that the house was unoccupied and that the accused gained possession by breaching the wall.

28. Moreover, the complainant did not assert that the appellant had any prior title or ownership in relation to the premises adjacent to the house in

question. Nevertheless, the appellant relies on certain revenue entries to claim that his father was the rightful owner of the said property. Notably, for a period of approximately 46 years, the complainant did not initiate any legal proceedings or raise any objection before any competent forum in this regard.

29. In cross examination he has admitted that ***“it is correct to suggest that it is not mentioned in my complaint that accused broke the adjoining wall of our house and entered in our house without our knowledge. It is correct to suggest that I have not mentioned in my direct complaint that neighbours of our house informed Mithumal that original broker of both houses was late Abdul Razak Bhatti. It is correct to suggest that it is not mentioned in my direct complaint that it was further mentioned in fake entry No.162 that my deceased father sold out No.120 to accused Mushtaq Ali for Rs.50,000/- in the year 1990. It is correct to suggest that it is not mentioned in my direct complaint that accused Muhammad Uris and his son Mushtaq Ali were fraudulent persons and were involved in fabricating record. It is correct to suggest that it is not mentioned in my direct complaint that report was called by Deputy Commissioner Larkana on my application from the Mukhtiarkar Ratodero and such report was submitted by Mukhtiarkar on 22.06.2019. It is correct to suggest that no report was submitted on 22.06.2019 by Mukhtiarkar”***.

30. The matter did not conclude with the present complaint. The complainant also instituted proceedings under Sections 3 and 4 of the Illegal Dispossession Act, 2005, before the competent court of law, wherein the appellant, along with his deceased father Muhammad Uris, as submitted by learned counsel, was acquitted vide judgment dated 20.11.2022, rendered by the learned II-Additional District Judge, Larkana.

31. In addition, the complainant filed a civil suit seeking Declaration, Possession, Compensation, and Mesne Profits. However, the said suit was also dismissed vide judgment dated 24.02.2025 passed by the learned Senior Civil Judge-I, Larkana, as the complainant failed to establish allegations of fraud and forgery during the civil proceedings before the court of competent jurisdiction.

32. The allegation against the appellant, Niaz Ali Siyal, and Sher Muhammad Siyal was that, in

collusion with the main accused, they unlawfully mutated the revenue record in favour of the accused persons. In his testimony, the complainant concluded his statement by asserting that ***“the private accused have falsified and fabricated the record and are still in possession of both houses, while the official accused may have perhaps filed a fake report before the Deputy Commissioner.”***

33. It is indeed perplexing that the learned trial court proceeded to convict the accused solely on the basis of this vague and speculative assertion. In the prior civil litigation, the complainant failed to establish that the accused, Mushtaq Ali, had colluded with any official respondents to procure or prepare a fraudulent entry in the revenue record. Notably, during the lifetime of the complainant's father, and even subsequently, no legal action was initiated before any competent forum seeking possession of the disputed property.

34. It was only after the complainant's retirement from government service, and allegedly upon receiving certain information from one Mithumal, that he initiated litigation by filing a direct complaint under Sections 3 and 4 of the Illegal Dispossession Act, in addition to instituting a civil suit for possession. Yet, in all forums except for the direct complaint the complainant remained unsuccessful. The conviction rendered by the learned trial court, in the absence of any cogent documentary evidence demonstrating the complainant's possession of the disputed property, reflects a misappreciation of the evidence available on record.

35. The alleged forgery in the revenue record pertains to the year 1990, whereas the complainant filed the Direct Complaint only on 28.03.2016, after an extraordinary and unexplained delay of approximately twenty-five (25) years. No plausible or satisfactory justification has been provided by the complainant for such an inordinate and startling lapse of time. Prior to filing the instant Direct Complaint, the complainant had initiated proceedings under the Illegal Dispossession Act on two separate occasions, both of which were dismissed by the learned trial court on the ground that the dispute was purely of a civil nature.

36. With respect to appellant Sher Muhammad, it is on record that he served as a Tapedar in the Revenue Department, Larkana, and was posted to said position on 18.07.2013, thirteen (13) years after the alleged transaction took place in 1990. Furthermore, it is an undisputed fact that in

1990, neither Niaz Ali held the office of Mukhtiarkar of Taluka Ratodero nor Sher Dil served as Tapedar. There is also no allegation in the Direct Complaint that these officials made or maintained any revenue entries pertaining to the transaction in question. Thus, holding them responsible for any alleged forgery or illegal mutation is wholly unsustainable and casts serious doubt upon the credibility and veracity of the prosecution's case.

37. The complainant has admitted that his father passed away in a hospital in Hyderabad; however, he failed to produce any death certificate from the concerned hospital during trial. Moreover, no documentary evidence was submitted from the service record of the deceased, who was a retired Headmaster from the Education Department, to substantiate the date or fact of his death. The complainant claimed that his father passed away in 1989, yet in cross-examination, he conceded that the revenue record reflected an entry of his father's death only after a delay of twenty-nine (29) years. It is further notable that despite the complainant and his two brothers being well-educated, practicing advocates, they failed to take timely steps to update the revenue record regarding their father's demise.

38. The complainant has been an enrolled advocate. Even if, for the sake of argument, it is presumed that the transaction between the accused and the complainant's father was fraudulent, there is no explanation as to why the complainant and other legal heirs remained silent for more than twenty-five (25) years and made no efforts to recover possession of the property through appropriate legal means.

39. The complainant also testified that a portion of his family relocated from Naudero in 1994-95. However, to substantiate his claim of possession, he failed to produce any utility bills, such as electricity or Sui Gas bills, which in fact stand in the name of appellant Mushtaq Ali. Regarding the allegation of replacing or tampering with official records, learned counsel for the appellants has pointed out that the complainant only asserted his purported rights after his nephew was appointed as Additional Commissioner, Larkana, further raising questions regarding the bona fides of the complaint.

40. It is also important to note that prosecution witness Mithomal, whose testimony allegedly supported the complainant's version, was not produced after the case was remanded for retrial. During the initial trial proceedings, he had given a

statement contradicting the complainant's version and had not supported the prosecution's case.

41. The upshot of the above discussion is that the complainant/prosecution has miserably failed to bring home the guilt of the appellants beyond reasonable doubt and it is a settled proposition of law that for giving the benefit of the doubt to an accused there doesn't need to be many circumstances creating doubts if there is a single circumstance which creates reasonable doubt about the guilt of the accused, then the accused will be entitled to the benefit. In this respect, reliance can be placed upon the case of **MUHAMMAD MANSHA v. THE STATE reported in 2018 SCMR 772**, wherein the Hon'ble Supreme Court of Pakistan has held that:

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to be benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).”

42. It is a well-settled principle of criminal administration of justice that no conviction can be awarded to an accused until and unless reliable, trustworthy and unimpeachable evidence containing no discrepancy in the prosecution story. By taking the guideline from the case laws cited at (supra), I am of the view that in the present case, the complainant/prosecution story is overwhelmed under the thick clouds of doubt and the learned trial Court has not evaluated the evidence in its true perspective and thus arrived at an erroneous conclusion by holding the appellants are guilty of the offence. Thus, the instant Criminal Appeals No.S- 21 and 22 of 2023 are **allowed**. Consequently, the conviction and sentence awarded to the appellants named above by learned Special Judge Anti-Corruption (Provincial) Larkana vide impugned judgment dated 09.03.2023 are hereby set aside. They are acquitted of the charge

by extending the benefit of the doubt. The accused are present on bail their bail bonds stand cancelled and surety is discharge.”

14. The appeals in hand have arisen out of subsequent Direct Complaint No.14 of 2016 filed by same complainant Aijaz Ahmed Bhatti against same beneficiary/appellant Mushtaque Ali Mirani and his son Nadeem Ali as well as Haji Khan Mirani, alleging therein that during pendency of previous complaint, he came to know that accused Mushtaque Ali Mirani is intending to sell out subject property to his son Nadeem Ali Mirani and subsequently complainant learnt that Mushtaque Ali Mirani sold subject property to his son Nadeem Ali in the year 2014 in the sum of Rs.20,000/=, by changing the boundaries of subject property/two houses by dismantling inner side wall in order to create multiplicity of litigation, such sale deed was prepared by Stamp-vender Haji Khan (present appellant) which was signed by Farman Ali, the then Sub-Registrar, Ratodero, hence complainant filed Direct Complaint No.14 of 2016 against private accused Mustaque Ali. his son Nadeem Ali Mirani, as well as vendor Haji Khan and Farman Ali, the then Sub-Registrar, Ratodero (who jumped bail during pendency of said Direct Complaint and was issued N.B.Ws followed by proclamation under Section 87/88 Cr.P.C and was declared proclaimed offender) and on conclusion of trial in the Direct Complaint No.14 of 20214, remaining accused/appellants were convicted and sentenced under impugned judgment dated 06.12.2024 which is assailed before this Court in instant appeals.

15. Since this Court has already allowed Cr.Appeals No.S-21 and 22 of 2023 while acquitting accused/appellants Niaz Ali Siyal and Sher Muhammad, the Mukhtiarkar and Tapedar respectively as well as private accused/appellant namely Mushtaque Ali Mirani (beneficiary of same subject property) and the setting aside the judgment dated 09.3.2023 passed by trial Court in first Direct Complaint No.11 of 2016 being the foundation case pertaining to claim of complainant in respect of same subject property, on the ground that prosecution failed to

bring home the guilt of said accused/appellants including present appellant Mushtaque Ali Mirani, therefore, in the instant appeals also the prosecution has failed to prove charge against the present appellants out whom appellant Mushtaque Ali Mirani and Nadeem Ali Mirani are beneficiary of same subject property as well as the appellant Haji Khan Mirani, who being vendor of sale deed having discharged very limited role of preparation of sale deed in presence of all the relevant parties has nothing contrary to law and he has nothing to do with the allegations levelled by the complainant.

16. It is a well-settled principle of criminal administration of justice that no conviction can be awarded to an accused until and unless reliable, trustworthy and unimpeachable evidence containing no discrepancy in the prosecution story. By taking the guideline from the case laws cited at (supra) in judgment dated 13.5.2025 passed by this Court in above referred Cr.Appeals No.S-21 and 22 of 2023, I am of the view that in the present case also, the complainant/prosecution story is overwhelmed under the thick clouds of doubt and the learned trial Court has not evaluated the evidence in its true perspective and thus arrived at an erroneous conclusion by holding the appellants are guilty of the offence. Thus, the instant Criminal Appeals No.S- 113 and 114 of 2024 are **allowed**. Consequently, the conviction and sentence awarded to the appellants named above by learned Special Judge Anti-Corruption (Provincial) Larkana vide impugned judgment dated 06.12.2024 are hereby set aside. They are acquitted of the charge by extending the benefit of the doubt. The accused are present on bail, their bail bonds stand cancelled and surety is discharge.

JUDGE

Shabir/P.S

