

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.113 OF 2019

Appellants : i. Ishtiaq
ii. Mushtaq Ahmed
iii. Irshad Ali
all sons of Wahid Bux
through Mr. Reham Ali Rind,
Advocate

Complainant : Malik Iftikhar Nasir S/o Abdul
Majeed
through Mr. Nasir Raza Rind,
Advocate

Respondent : The State
through Mr. Muhammad Iqbal
Awan, Additional Prosecutor
General Sindh.

Date of Hearing : 04.03.2024

Date of Order : 11.03.2024

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- Accused Ishtiaq, Mushtaq Ahmed and Irshad Ali were tried vide judgment dated 21.02.2019 passed by learned Additional Sessions Judge-V Malir, Karachi in I.D. No.13 of 2017; whereby the above said accused were convicted u/s 3 subsection (2) of Illegal Dispossession Act, 2005 for the alleged offence and sentenced to suffer R.I. for three years and fine of Rs.10,000/- each; however, in default of payment of fine, they shall suffer S.I. for two months more. Accused were also directed to pay Rs.30,000/- each as compensation to the complainant as required under Section 544-A Cr.P.C. and in default of payment of compensation, the accused shall suffer R.I. for three months more and to restore possession of the property to the complainant.

2. The brief facts of the complaint are that the complainant filed the complaint, mentioning therein that in the year 2006 he purchased a plot bearing No.R-204, Sector 30-B, measuring 120 Sq. Yards Shah Latif Town Malir Karachi. He constructed boundary wall and two rooms on the said plot and used to visit his plot. He is a contractor and his construction material was also lying at the

said plot. On 16.07.2016 he came to know that some persons along with their families illegally occupied this plot by breaking locks. He went to police station and moved an application to SHO but police did not lodge FIR and on his application, SHO conducted enquiry through enquiry officer. His documents were sent for verification to concerned department and after verification FIR was lodged on 10.04.2017. On the same day, he along with I.O. went to his property. Accused due to fear of police fled away. Under the shelter of police, the complainant broke the locks of the plot and affixed his own locks and obtained peaceful possession of the plot in question. It is further stated that on 20.04.2017 at about 05:00 PM the complainant along with Muhammad Babar and Abdul Waheed were present at his plot bearing No.R-204, when suddenly above named accused persons along with their gunda elements armed with deadly weapons, attacked over the complainant and made aerial firing to spread terror in the mind of general public and forcibly dispossessed the complainant from his legal and lawful right of plot No.204 measuring 120 Square Yards, Sector 30-B Shah Latif Town Malir without any cause and justification. Thereafter the complainant immediately proceeded to concerned SHO PS Shah Latif Town and requested for registration of FIR against the accused persons and restoration of possession of the plot but the SHO of PS Shah Latif Town, kept him on hollow hopes and lastly refused to register the FIR. It is stated that the accused above named are in illegal and unlawful possession of the plot and they have illegally occupied over his previous right and have deprived him from his legal and lawful right. They have no any title over the disputed plot, he is only legal and lawful owner of the plot, therefore the possession of the plot may kindly be restored to him. He stated that he has no other alternate remedy except to knock the door of this Hon'ble Court for redressal of his grievances. He therefore filed instant complaint before the Court.

3. After receiving complaint, report was called from the SHO of PS Shah Latif Town. The SHO submitted inquiry report before this Court where after cognizance was taken and bailable warrants were issued against the accused.
4. On 15.07.2017 charge against the accused was framed to which they pleaded not guilty and claimed trial.
5. The court proceeded the case and examined complainant Malik Iftikhar Nasir, who produced/exhibited Sale Deed, Mutation Order, FIR and memo of

complaint. The Complainant examined his witness Muhammad Babar and witness Shabir Ahmed in order to prove his case.

6. An application under Section 227 Cr.P.C. was filed by learned counsel for complainant for amendment of charge, which was allowed and amended charge was framed against above named accused persons to which they pleaded not guilty and claimed trial. The learned counsel for the complainant filed his statement, wherein he prayed that he adopted same evidence which was recorded by this Court vide his statement and was not objected to by the appellants.

7. Statement of accused persons was recorded under Section 342 Cr.P.C. who claimed ownership of the Property; however, neither they examined themselves on oath nor produced any witness in their defence.

8. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellants and sentenced them as set out earlier in this judgment; hence, the appellants have filed this appeal against their conviction.

9. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 21.02.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

10. Learned counsel for the appellants submitted that the Property belonged to the appellants and that they were the lawful owners of the same and as such they should be acquitted of the charge and the Property restored to them.

11. Learned counsel for the Complainant and Addl. P.G. submitted that the Property belonged to the complainant and that he had been illegally dispossessed of the same by the appellants which lawful ownership he had proved through the evidence which he had brought on record both oral and documentary and as such the appeal be dismissed.

12. I have heard the learned counsel for the parties and have perused the material available on record.

13. The issue before me is whether the complainant has been illegally dispossessed from the property known as R-204 Block/Sector 30-B, measuring 120 square yards situate at Shah Latif Town Malir Karachi (the Property) by the

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appellants on show of arms on 20.04.2017 at about 5pm and as such the appellants committed the offence under S.3 and 4 of the Illegal Dispossession Act 2005.

14. An initial point is that the charge was initially framed on 15.07.2017 stating that the illegal dispossession took place on 16.07.2016 and thereafter the prosecution evidence was recorded. The charge was amended on 19.12.2018 which simply changed the date of dispossession by the appellants to 24.07.2017 and thereafter the essence of the charge remained the same. Neither party objected to the earlier examined witnesses evidence not being re recorded and neither side was prejudiced by the amended charge and the non re-recording of the prosecution evidence which would only have delayed the trial as in effect the charge was the same and the appellants knew the case which they had to defend themselves against. Namely, that they had not illegally dispossessed the Property from the complainant under the illegal dispossession Act 2005 as it belonged to them and not him.

15. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge against the appellants for which they were convicted for the following reasons;

- (a) The prosecution case is based on both ocular and documentary evidence.
- (b) With regard to the ocular evidence PW 1 Malik Nazir is the complainant of the case. According to his evidence in 2006 he purchased the property through sale deed and mutation order and constructed a boundary wall and two rooms around/on the Property where construction material was also left. In 16.07.2016 persons illegally occupied the Property by breaking the locks. They claimed the Property belonged to them but ↙ : could not show any property documents in support of their claim. He reported the matter to the police where his documents were verified. An FIR was lodged. Later on 20.04.2017 the appellants came and occupied the Property by force of arms and the complainant had no option but to vacate the Property. He therefore lodged complaint for restoration of Property under the Illegal Dispossession Act 2005. He was not dented during cross examination which tended to suggest that the Property was actually located else where. His evidence is corroborated by PW 2 Muhammed Babar in all material respects who was present with him at the time when he was illegal dispossessed by the appellants on show of arms from the Property whose evidence was also not dented during cross examination. PW 3 Shabir Ahmed also gave evidence that he constructed the wall, rooms and gate on the Property belonging to the complainant and again was not dented during cross examination. I find all their evidence to be trust worthy, reliable and confidence inspiring and believe the same.

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- (c) With regard to documentary evidence this supports/corroborates the ocular evidence with regard to the ownership of the Property. Namely, the complainant being the lawful owner. The complainant produced the original sale deed and mutation order in respect of the Property which were both in his name. The complainant moved an application for verification of the Property and in particular who was the lawful owner of the Property which was allowed by the trial court which fully confirmed that the complainant was the lawful owner of the Property by letter dated 31.10.2018 from the Malir Development authority which is set out below for ease of reference;

"MALIR DEVELOPMENT AUTHORITY
DIRECTORATE OF LAND MANAGEMENT
SHAH LATIF TOWN SCHEME 25-A
4th Floor, Business Arcade, Opposite Askari Park
Main University Road, Gulshan-e-Iqbal, Karachi.

No: MDA / LAND / AD / SLT / 2018 / 13518/L Dated: 31/10/2018

THE SHARISTEDAR
Vth ADDITIONAL DISTRICT &
SESSIONS JUDGE MALIR,
KARACHI.

SUBJECT: CALL VERIFICATION DETAIL REPORT OF PLOT
NO.R-204 BLOCK/SECTOR-30-B MEASURING 120
SQ YARDS, SHAH LATIF TOWN MDA

With reference to Your Crl. Illegal Dispossession No: 13/2017 received in this office on Dated: 29-10-2018 on the subject noted above, I am directed to inform the PLOT NO:R-204 SECTOR 30-B, SHAH LATIF TOWN was allotted to MR. AMJAD NASEEM S/O MUHAMMAD RAFIQUE Vide A/O No: 1376, Dated: 15-05-1983. Further, the said Plot was transferred & leased out in the name MR. MUHAMMAD SAEEDUL BARI S/O ABDUL GHAFOR vide T/O No: 1031, Dated: 22-10-1989. Finally, the said Plot was mutated through Sale Deed in favour of MR. MALIK IFTIKHAR NASIR S/O ABDUL MAJEED vide M/O NO: 430 Dated: 17-02-2007, as per Land Branch of Shah Latif Town, Scheme 25-A MDA.

This is for your kind information please.

Sd/-
ASSISTANT DIRECTOR (I/M)
SHAH LATIF TOWN SCHEME 25-A

Copy for information to the Director Land
Management, MDA." (Bold added)

- (d) The appellants in their S.342 Cr.PC statements claimed that the Property was located else where. They did not give evidence on oath or any DW in support of their defence case. In the paper book they produced no ownership document although in the impugned judgment it is found that the documents produced by the appellants are forged and managed. The earlier FIR lodged by the complainant

where the appellants were acquitted is of no relevance as that was lodged under the PPC where as the complaint in hand arose later after a different and separate act committed by the appellants under the Illegal Dispossession Act 2005.

16. Thus for the reasons mentioned above I find that the prosecution has proved its case against the appellants beyond a reasonable doubt and the appeal is dismissed. It is noted that the possession of the Property has already been restored to the complainant.

17. Consequently, the appellants Ishtiaq, Mushtaq Ahmed and Irshad's bail is recalled and they shall be arrested by SHO PS Shah Latif Town and returned to Central Prison Karachi to serve out the remainder of their sentences. They shall be entitled to the benefit of S.382 (B) Cr.PC. A copy of this Judgment shall be sent to SSP Malir for implementation.