

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Acquittal Appeal No.S-11 of 2023
(Aijaz Ahmed v. Mushtaque Ahmed & others)

| DATE OF HEARING | ORDER WITH SIGNATURE OF HON'BLE JUDGE |
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| | <ol style="list-style-type: none">1. For orders on office objection 'A'.2. For orders on M.A.No.532/2023.3. For hearing of main case. |

02.02.2026

Appellant in person.
Mr. Ali Anwar Kandhro, Addl. P. G.

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Adnan Iqbal Chaudhry J. - This case has been filed as an acquittal appeal under section 417(2) Cr.P.C read with section 8-A of the Illegal Dispossession Act, 2005. The impugned order dated 21.12.2022 has been passed by the IV-Additional Sessions Judge, Larkana in Sessions Case No. 35/2019, acquitting the Respondents 1 and 2 and dismissing the Appellant's complaint made under the Illegal Dispossession Act. However, since said Act is special law, the appellate provisions in that Act will prevail over section 417 Cr.P.C.

2. Under section 8-A of the Illegal Dispossession Act, 2005, an order that is appealable to the High Court is an order made: (a) under sub-section (2) of section 3 of the said Act; (b) under sub-section (3) of section 3 of the said Act; and (c) under sub-section (1) of section 8 of the said Act. The orders passed under sub-sections (2) and (3) of section 3 of the said Act are those where a punishment is handed down; whereas an order under sub-section (1) of section 8 is where a further direction is given for restoration of possession of the property. The order impugned herein is neither as it is an order dismissing the complaint, and therefore not appealable under section 8-A of the Illegal Dispossession Act, 2005. However, the absence of an appeal would not bar a criminal revision under sections 435 and 439 Cr.P.C. It is then also settled law that in the administration of justice, the High Court can convert one type of proceedings into another. Since this case has been pending since 2023 without the aforesaid objection by the office, I convert this

appeal to a criminal revision under sections 435 and 439 Cr.P.C. **The Applicant shall file an amended title accordingly.**

3. It appears that Respondents 1 and 2 were appearing in this matter before their presence was dispensed with by order dated 27.11.2025 until the Applicant could make out a case for interference. Learned Additional P.G. states that such order was presumably passed by this Court in view of para 10 of the impugned order which observed that the dispute between the Applicant and Respondents 1 and 2 was of a civil nature, and that an earlier complaint under the Illegal Dispossession Act, filed by the Applicant against Respondent No.1 on the same set of facts, had been dismissed. Responding to that, the Applicant submits that such observations in the impugned order were a result of a mis-reading and non-reading of the record. He has taken the Court through the record to highlight the following facts:

- (i) That Respondent No.1, who was the Applicant's neighbor, had taken possession of house No. 128 & 129 by relying on a mutation entry in his favor by way of sale from the Applicant's father in respect of one of those houses. However, by order dated 23.02.2016, the Deputy Commissioner, Larkana acting under the Sindh Land Revenue Act, had found that the mutation entry relied upon by Respondent No.1 was fake as the Applicant's father had passed away long before the alleged sale; therefore, such entry was cancelled, and the entry in favor of the Applicant's father was restored;
- (ii) Aforesaid order of Deputy Commissioner, Larkana was challenged by Respondent No.1 by way of a civil suit, which was dismissed;
- (iii) That the previous complaint under the Illegal Dispossession Act, numbered as Sessions Case No. 32/2017, was filed when illegal possession was with Respondent No.1; whereas the second complaint, numbered as Sessions Case No. 35/2019 was filed on a fresh cause of action when Respondent No.1 delivered possession to his son, the Respondent No.2;

(iv) That though Sessions Case No. 32/2017 was dismissed, it was remanded by the High Court on appeal by judgment dated 20.11.2020 and is still pending before the trial court.

4. It appears that aforesaid facts were not noticed by the learned Additional Sessions Judge in passing the impugned order. Therefore, the revision requires consideration. **Repeat notice to the Respondents 1 and 2 for 23.02.2026.** The Applicant shall place on record copies of proceedings in Sessions Case No. 32/2017 and the judgment of the High Court dated 20.11.2020.

Judge

M Yousuf Panhwar**