

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 128 of 2026

Appellant/Complainant : Raees-ur-Rehman through Mirza Sarfraz Ahmed, Advocate.

Respondents : Nemo.

Date of hearing : 12.03.2026.

Date of judgment : 12.03.2026.

### J U D G M E N T

**TASNEEM SULTANA – J:-** Through this Criminal Acquittal Appeal, the appellant/complainant has called in question the order dated 14.01.2026 passed by learned IIIrd Additional Sessions Judge, Malir, Karachi in Illegal Dispossession Complaint No.53 of 2021, whereby respondents No.1 and 2 namely Noor Sal and Haji Muhammad Umar were acquitted under Section 265-K Cr.P.C. in respect of charge under Sections 3 and 4 of the Illegal Dispossession Act, 2005.

2. The brief facts of the prosecution case are that the appellant/complainant filed an Illegal Dispossession Complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005 alleging therein that one Mst. Nusrat Mirza Chughtai was lease-holder of land admeasuring 17777 square yards situated at Sector 15-B, Scheme-33, Karachi and out of said land, the complainant purchased half portion measuring 8888.88 square yards through Agreement to Sell dated 08.03.1999 against sale consideration of Rs.1,777,776/-. It was alleged that physical possession along with original documents was delivered to the complainant and subsequently an Irrevocable General Power of Attorney dated 27.07.1999 was also executed in his favour. According to complainant, he remained in peaceful possession of the property, constructed boundary wall and deployed guards at the premises; however, on 30.11.2019 respondents along with their associates forcibly dispossessed the complainant from the subject land, removed guards and occupied the property through force and intimidation, regarding which FIR No.809 of 2019 under Sections 147, 148, 427, 448, 506-B and 337-A PPC was lodged at Police Station Sachal, Karachi. Thereafter, the complainant instituted the present complaint seeking punishment of accused persons under the Illegal Dispossession Act, 2005 as well as restoration of possession. Record further reflects that during pendency of proceedings, the complainant also filed Civil Suit No.84 of 2020 seeking declaration, possession and permanent injunction in respect of the same property, which was dismissed by the learned Civil Court vide judgment and decree dated 04.10.2024 and thereafter Civil Appeal No.161 of 2024 filed by the complainant was also dismissed by the learned District Judge, Malir, Karachi vide judgment dated 12.09.2025.

3. Formal charge was framed against respondents No.1 and 2 to which they pleaded not guilty and claimed trial.

4. In support of his case, complainant examined himself and produced Agreement to Sell, Irrevocable General Power of Attorney, revenue documents, treasury challans, regularization documents, inquiry reports and copies of civil proceedings. Respondents/accused cross-examined the complainant at length.

5. Thereafter respondents No.1 and 2 filed application under Section 265-K Cr.P.C. on the ground that the complainant had failed to establish lawful possession over the disputed property and that the dispute between the parties was purely civil in nature involving rival claims of title and possession. Learned trial Court, after hearing learned counsel for the parties, allowed the application through impugned order dated 14.01.2026 and acquitted respondents No.1 and 2 under Section 265-K Cr.P.C.

6. Learned counsel for the appellant contended that the impugned order is contrary to law and facts of the case; that the appellant had produced Agreement to Sell, Irrevocable General Power of Attorney, revenue documents, treasury challans, regularization documents, inquiry reports and other supporting material showing his possession over the disputed property; that after purchase the appellant remained in possession of the property, raised boundary wall and deployed guards at the premises; that respondents forcibly dispossessed the appellant from the subject property on 30.11.2019 regarding which FIR No.809 of 2019 was also lodged at Police Station Sachal, Karachi; that the learned trial Court travelled beyond the permissible scope of jurisdiction under Section 265-K Cr.P.C. and prematurely terminated the proceedings despite availability of sufficient material requiring full-fledged trial; and that disputed questions regarding possession and title could not legally be decided at the stage of Section 265-K Cr.P.C. Learned counsel lastly contended that the impugned order is liable to be set aside and the complaint be remanded for recording of remaining evidence in accordance with law.

7. Learned Deputy Prosecutor General contended that the appellant had failed to establish lawful possession over the disputed property; that the documents relied upon by the appellant were merely unregistered agreements and allied documents; that the material available on record itself reflected existence of prior disputes and civil litigation between the parties regarding the subject property; that the inquiry proceedings also did not support exclusive lawful possession of the appellant; that the matter was essentially civil in nature involving rival claims of title and possession; and that the learned trial Court rightly exercised jurisdiction under Section 265-K Cr.P.C. after correctly concluding that continuation of criminal proceedings would amount to abuse of process of law. Learned D.P.G. lastly argued that the impugned order does not suffer from any illegality, perversity or misreading of record warranting interference by this Court.

8. Heard. Record perused.

9. The Illegal Dispossession Act, 2005 is a special enactment providing summary and speedy remedy against illegal and forcible dispossession from immovable property. For constituting an offence under Section 3 of the Illegal Dispossession Act, 2005, the complainant is required to establish: (i) that he is the actual owner or occupier in lawful possession of the property; (ii) that the accused entered upon the property; (iii) that such entry was without lawful authority; and (iv) that such entry was with intent to dispossess, grab or control the property. It is well-settled that unless all the ingredients co-exist, no offence under the Act is made out. In *Mst. Naseem Aziz v. The State and others* (2016 P Cr. L J 786 Sindh), it has been held that if even one ingredient is missing, the offence cannot be said to be established.

10. The foundational requirement, therefore, is lawful possession. The expression "occupier" under clause (c) of Section 2 of the Act means a person in lawful possession of the property. The protection of the Act extends to lawful owner or lawful occupier, and not to a person whose possession itself is doubtful, disputed or unsupported by cogent documentary title. In *Mst. Khatoon v. Muhammad Saleem and another* (2010 P Cr. L J 1046), it was held that all ingredients of Section 3 of the Illegal Dispossession Act, 2005 must co-exist before an offence can be said to have been made out and if even one ingredient is missing, no offence under the Act is constituted.

11. The core question in this appeal is whether the learned trial Court was justified in acquitting the respondents under Section 265-K Cr.P.C. on the ground that the appellant failed to prima facie establish the essential ingredients of the offence under the Illegal Dispossession Act, 2005. It is, therefore, to be examined whether lawful possession within the meaning of Sections 2(c) and 3 of the Act stood established from the material available on record.

12. In the present case, the documents relied upon by the appellant consist primarily of agreements to sell, power of attorney and exchange letters tracing previous transactions. The appellant has not produced any registered conveyance deed in his favour. The documents produced by the appellant themselves reflect that the subject land pertains to KDA, whereas lawful mutation in favour of the appellant has also not been shown from the material available on record. The material produced further includes certain utility and revenue-related documents of comparatively recent period, which by themselves do not conclusively establish settled and exclusive lawful possession. The inquiry proceedings and reports available on record also note prior disputes and litigation regarding the same property.

13. It is also borne out from record that civil litigation between the parties in respect of the same property remained pending before competent Courts and the complainant had filed Civil Suit No.84 of 2020 seeking declaration, possession and

permanent injunction, which was ultimately dismissed by the learned Civil Court vide judgment and decree dated 04.10.2024. The appeal preferred thereagainst being Civil Appeal No.161 of 2024 was also dismissed by the learned District Judge, Malir, Karachi vide judgment dated 12.09.2025. The inquiry officer further observed that dispute between the parties over the subject property had been continuing and that no unimpeachable proof of exclusive lawful possession was available. The learned trial Court, upon scrutiny of documents and material brought on record, found that the appellant failed to demonstrate that he was in settled lawful possession at the time of alleged incident.

14. On perusal of the record, it appears that the claim of ownership rests mainly upon unregistered agreements and allied documents. The documents produced by the appellant themselves reflect that the subject land pertains to KDA, whereas transfer of registered title in favour of the appellant has not been shown from the material placed on record. In absence of documentary evidence showing transfer of title or lawful mutation, and in view of admitted prior disputes and civil litigation between the parties, the possession claimed by the appellant cannot be termed unequivocally lawful within the meaning of the Illegal Dispossession Act, 2005. Where the very foundation of lawful possession is clouded by serious civil dispute and absence of registered title, invocation of the Illegal Dispossession Act, 2005 would not be warranted.

15. It is a settled principle that the Illegal Dispossession Act, 2005 is not intended to resolve complicated questions of title nor to adjudicate civil disputes of ownership. Where the dispute revolves around competing claims arising from agreements to sell, exchange documents and rival assertions of possession, the proper remedy lies before a competent civil Court. Criminal proceedings under the Act cannot be employed as substitute for civil adjudication. In *Mian Rahman Badshah v. The State and others* (2026 MLD 723), it was held that where the prosecution evidence itself reflects existence of serious civil dispute regarding title and possession and no probability of conviction remains, acquittal under Section 265-K Cr.P.C. is justified and does not warrant interference in appeal against acquittal.

16. The material available on record further reflects that no independent and unimpeachable evidence was produced by the complainant to establish settled and exclusive lawful possession over the disputed property. The inquiry proceedings and admitted civil litigation between the parties consistently reflected rival possession claims and continuing dispute regarding title and occupation of the subject property. In such circumstances, continuation of criminal proceedings under the Illegal Dispossession Act, 2005 would not serve the object of the statute and the matter essentially remains of civil nature.

17. It is settled law that jurisdiction under Section 265-K Cr.P.C. can validly be exercised where the prosecution evidence already brought on record, even if accepted at its face value, fails to disclose sufficient incriminating material connecting the accused with commission of offence and continuation of proceedings would amount to abuse of process of law. The language of Section 265-K Cr.P.C. itself provides that the Court may acquit an accused person “at any stage of the case”. In *Abbas Haider Naqvi and another v. Federation of Pakistan and others* (PLD 2022 SC 562), the Honourable Supreme Court has held as under:-

“11. First of all, we would like to state that there can be no cavil to the rule of practice and propriety, referred to by the High Court, that when the trial is near completion, the fate of the case should not ordinarily be decided under Section 265-K of the Cr.P.C. There may however be such exceptional circumstances which may justify departure from the said rule, as there is hardly any rule of practice which does not admit exception(s). Even otherwise, Section 265-K of the Cr.P.C. provides that the trial court can make an order of acquittal at any stage of the case, and such stage may be an initial stage of the case on taking cognizance before recording of the prosecution evidence, or it may be a later stage of the case after recording of some evidence of the prosecution. No absolute bar, in derogation of the law, can therefore be put on the statutory power of the trial court to entertain an application under Section 265-K, Cr.P.C. and decide upon its merits at a later stage of the trial if the exceptional circumstances of the case call for so doing to prevent the abuse of the process of court or to secure the ends of justice.”

18. The scope of interference in an appeal against acquittal is extremely narrow and limited, because in an acquittal the presumption of innocence stands further strengthened in addition to the cardinal rule of criminal jurisprudence that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. An appellate Court needs to be cautious while considering the evidence and should avoid reversal of an acquittal, unless it finds that the acquittal is perverse, conjectural, arbitrary, jurisdictionally defective and prompted by misreading or non-reading of evidence. Even if a contrary view is formed on re-appraisal of evidence, it should not be used to disturb an acquittal, provided convincing evidence is available on the record to reverse acquittal. In this respect, reference may be made to the judgment of the Honourable Supreme Court rendered in the case of *Jehangir v. Aminullah and others* (2010 SCMR 491), wherein it was held:-

“It is well-settled by now that there are certain limitations on the power of the Appellate Court to convert acquittal into a conviction. It is well-

settled that 'Appellate 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 conclusive and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose.'

Similar view was reiterated in *Zeeshan Malik v. Muhammad Nasir and 5 others* (2024 P Cr. L J 1163), wherein it was held that powers under Section 265-K Cr.P.C. may be exercised at any stage where no probability of conviction exists and that interference in acquittal appeal is unwarranted unless the acquittal suffers from perversity, arbitrariness or gross misreading of evidence.

19. It is also a settled principle that benefit of doubt is not a matter of grace but a matter of right. In *Tariq Pervaiz v. The State* (1995 SCMR 1345), it was held that if a single circumstance creates reasonable doubt in the mind of a prudent person regarding the guilt of the accused, then the accused would be entitled to such benefit not as a matter of grace or concession but as a matter of right.

20. In view of the above facts and circumstances, I am of the considered view that the learned trial Court rightly exercised jurisdiction under Section 265-K Cr.P.C. and correctly concluded that continuation of criminal proceedings would amount to abuse of process of law. Accordingly, the impugned order does not suffer from any illegality, perversity, arbitrariness, misreading or non-reading of evidence warranting interference by this Court in appeal against acquittal. As a result thereof, this Criminal Acquittal Appeal, being devoid of merit, is dismissed and the impugned order dated 14.01.2026 passed by learned Illrd Additional Sessions Judge, Malir, Karachi in Illegal Dispossession Complaint No.53 of 2021 is maintained.

JUDGE