

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

*Criminal Appeal No. S-47 of 2022.
(Nisar Ahmed and others vs. The State and others)*

*Criminal Revision Application No. S-56 of 2022
(Mushtaque Ahmed Memon vs. The State and others).*

*Criminal Miscellaneous Application No. S-250 of 2025
(Mushtaque Ahmed vs. The State and others).*

Date of Hearing : 20.04.2026
Date of short order : 20.04.2026
Date of reason : 27.04.2026.

Mr. J.K Jarwar, Advocate for appellants in Cr. Appeal No.S-47 of 2022 and for respondents No.2 to 4 in Cr. Revision Application No. S-56 of 2022.

Mr. Muhammad Zubair Malik, Advocate for Complainant.

Mr. Muhammad Raza Katohar, Deputy Prosecutor General.

JUDGMENT

Ali Haider 'Ada' J:- By this common judgment, I intend to dispose of the above-captioned appeal as well as the connected Criminal Revision and miscellaneous applications.

2. Through Criminal Appeal No. 47 of 2022, the appellants have assailed the judgment dated 09.06.2022 passed by the learned Additional Sessions Judge-III, Naushahro Feroze (hereinafter referred to as the "trial Court") in Sessions Case No. 475 of 2020, titled *Mushtaque Ahmed Memon v. SSP Naushero Feroze and others*, arising out of a complaint under Sections 3/4 of the Illegal Dispossession Act, 2005. Vide the impugned judgment, the appellants were convicted and sentenced to undergo rigorous imprisonment for one year each, with a direction to hand over vacant possession of the disputed land to the complainant, along with payment of a fine of Rs. 20,000/- each; in default thereof, they were to undergo simple imprisonment for one month.

3. Briefly stated, the case of the complainant, Mushtaque Ahmed Memon, is that he is a co-sharer in agricultural land bearing Survey Nos. 617 and 618, Deh Naoabad, along with other co-sharers, including Shoukat Ali and others. It was asserted that the complainant was also managing the land of his maternal uncle, namely Shoukat Ali Memon. According to the complainant, the said land, including Survey Nos. 617, 618, and 641 of Deh Naoabad, was originally granted in the year 1936 to his forefathers by the Barrage Department, and the requisite T.O. Forms were issued. The complainant and his co-sharers subsequently became lawful owners thereof, and the entries were duly reflected in the record of rights. The allegations against the accused/appellants are that on 22.05.2020 at about 09:00 a.m., they, while armed with deadly weapons, unlawfully occupied the complainant's land and initiated construction thereupon. Upon resistance by the complainant, the accused allegedly extended threats of murder and used abusive language. It is further alleged that although the complainant approached Police Station Halani for registration of FIR, only an N.C. report was recorded, compelling him to file the complaint under the Illegal Dispossession Act, 2005.

4. After filing the complaint under Sections 3/4 of the said Act, the learned Sessions Judge, Naushahro Feroze, called for reports from the concerned SHO and Mukhtiarkar. Thereafter, the matter was transferred to the learned 1st Additional Sessions Judge, where the complaint was formally entertained vide order dated 03.11.2020 and process in the shape ofailable warrants was issued against the accused. In consequence thereof, the accused appeared and furnished surety. The prosecution supplied documents to the accused at Exh.1. Formal charge under Sections 3, 4, 5 read with Section 7 of the Illegal Dispossession Act, 2005 was framed at Exh.4 on 18.12.2020, to which the accused pleaded not guilty and claimed trial. In support of his case, the complainant examined himself at Exh.5 and produced documentary evidence, including property

extracts (Forms VII-A and VII-B), certified copies of civil proceedings, gift deed, terms and conditions of land grant, revenue entries, and other relevant documents. The prosecution further examined PW-2 Muhammad Shoaib (Exh.6), PW-3 Naeem Raja Jalbani (Exh.7), PW-4 Shafique Ahmed Soomro, Mukhtiarkar (Exh.8), who produced official revenue record and reports, and PW-5 SIP Buxial Khan Mallah (Exh.9), who produced inquiry report along with statements of witnesses. Thereafter, the complainant closed his side at Exh. 10.

5. The statements of the accused under Section 342, Cr.P.C, were recorded, wherein they denied the allegations and claimed innocence. However, they neither examined themselves on oath under Section 340(2) of the Cr.P.C. nor led any defence evidence.

6. Upon conclusion of the trial and hearing arguments, the learned trial Court convicted and sentenced the appellants as stated above, which judgment is now under challenge before this Court.

7. Learned counsel for the appellants contended that the matter essentially pertains to a civil dispute, which was already pending between the parties, and the learned trial Court failed to consider this aspect properly. It was further argued that prior to the civil proceedings, one Rasool Bux, allegedly related to the accused, had succeeded in litigation whereby entries in favour of the complainant's side were cancelled. Emphasis was placed on the pendency and effect of civil litigation, which, according to learned counsel, was not properly appreciated by the trial Court.

8. Conversely, learned counsel for the complainant submitted that the civil litigation was not inter se between the present parties, and that Rasool Bux had no nexus with the accused. He further relied upon revenue reports and evidence on record to assert that the accused were in illegal occupation of the land and were rightly held to be land grabbers. He also pressed Criminal Revision

Application No. 56 of 2022 for enhancement of sentence, contending that the punishment awarded by the trial Court was on the lower side. Additionally, he referred to Criminal Miscellaneous Application No. 250 of 2025 for cancellation of bail, alleging that the accused, after the grant of bail, again attempted to occupy the land.

9. Learned Deputy Prosecutor General supported the impugned judgment and submitted that the prosecution had successfully established its case through reliable evidence, including official reports, and therefore the conviction calls for no interference.

10. Heard learned counsel for the parties and perused the material available on record.

11. At the outset, it is necessary to reappraise the evidence available on record. The complainant, in his complaint under the Illegal Dispossession Act, 2005, specifically alleged in para-6 that on 22.05.2020 at about 09:00 a.m., the accused persons started raising construction over a portion of his plot. However, during cross-examination, he admitted that at the time of his arrival, 5 to 6 labourers were present and construction had already reached up to the DPC level. This creates a serious doubt, as it appears highly improbable that such construction could have been completed within such a short span of time as alleged by the complainant.

12. Furthermore, the complainant admitted during cross-examination that he had filed a civil appeal against the judgment and decree passed by the learned Senior Civil Judge, Mehrabpur, wherein the dispute pertained to ownership of the land, and that the Court had declared land measuring 23/24 ghuntas in favour of Darbar Halani. He also conceded that proceedings under Section 145, Cr.P.C. had been initiated, which further reflects the existence of a pre-existing dispute regarding possession and ownership.

13. A careful perusal of the record reveals that Civil Appeal No.19 of 2020 was filed by the complainant along with Shoukat Ali against

Rasool Bux and others. Prior thereto, Rasool Bux had instituted F.C. Suit No.24 of 2019 for declaration, cancellation, and permanent injunction. The dispute regarding ownership was also sub-judice before the revenue authorities. Notably, the learned Senior Civil Judge, Mehrabpur, vide judgment dated 17.10.2020, decided the matter not in favour of the complainant, thereby rendering his claim over the disputed property doubtful.

14. So far as the oral evidence is concerned, PW-2 Muhammad Shoaib did not materially corroborate the version of the complainant. The Mukhtiarkar (Revenue), examined as PW-4, produced a report stating that construction existed over Survey Nos. 618 and 641 of Deh Naoabad; however, he did not depose anything regarding the alleged illegal dispossession or specify the date or time of such construction. Thus, his testimony does not support the complainant's specific allegation of forcible dispossession on the date in question. Likewise, the report of the police official also lacks clarity with regard to the date and manner of the alleged occurrence.

15. It is also observed that while recording statements of the accused under Section 342, Cr.P.C, the learned trial Court did not put all incriminating pieces of evidence to the accused, which has caused prejudice to their right of fair trial.

16. Admittedly, civil litigation regarding the property in question is pending between the parties. It is a settled principle of law that proceedings under the Illegal Dispossession Act, 2005 are not meant to resolve complex questions of title or to act as a substitute for civil remedies. In this regard, reliance is placed upon the authoritative pronouncements in **Muhammad Feroz-ud-Din Hilali v. Nadir** 2025 SCMR 1702, **Nadeem Waqar Khan v. Javed Masood Ahmed Khan**, PLD 2020 Sindh 8, and **Manzoor Ali v. State**, 2020 MLD 1138.

17. In view of the above discussion, the prosecution has failed to establish its case against the appellants beyond reasonable doubt.

Consequently, Criminal Appeal No. S-47 of 2022 is allowed, the impugned judgment dated 09.06.2022 passed by the learned trial Court in Sessions Case No. 475 of 2020 is hereby set aside, and the appellants are acquitted of the charge. As a necessary consequence, Criminal Revision Application No. S-56 of 2022 filed by the complainant for enhancement of sentence and Criminal Miscellaneous Application No. S-250 of 2025 for the cancellation of bail stands dismissed. These are the detailed reasons in support of the short order already announced.

JUDGE