

THE HIGH COURT OF SINDH, CIRCUIT COURT, AT HYDERABAD.

Before:

Mr. Justice Miran Muhammad Shah.

Criminal Acquittal Appeal No.S-178 of 2024

Appellant : Khalid Mehmood Almani son of Haji Allah Dino Almani, through Mr. Ayatullah Khawaja, advocate.

Respondents : 1. Dhani Bux son of Wali Muhammad (since died).
2. Jan Muhammad son of Dhani Bux.
3. Abdullah Babbar son of Dhani Bux Babar.
4. Murtaza Babbar son of Not Known.

Through Mr. Ali Ahmed Zaman Patoli, advocate.
Mr. Muhammad Yousuf Rahpoto, A.A.G, Sindh.

Date of hearing : 29.05.2025.

Date of Judgment : 01.08.2025.

O_R_D_E_R.

Miran Muhammad Shah, J:- The appellant has filed the present Criminal Acquittal Appeal under Section 8-A of the Illegal Dispossession ACT, 2005 challenging the Judgment dated 18.11.2024 passed by the learned Sessions Judge, Hyderabad, in Direct Complaint/Sessions Case No.155 of 2018 (Re: Khalid Mehmood Almani vs. Dhani Bux and others) whereby the learned trial Court acquitted the respondents. Hence, the instant Criminal Acquittal Appeal has been filed.

2. The brief facts of the Direct Complaint are that on 17.04.2017, the complainant Khalid Mehmood Almani filed a complaint under Sections 3, 4, 7 & 8 of Illegal Dispossession Act, 2005 before the learned Sessions Judge, Tando Allahyar, in which he alleged that he is the owner of the land admeasuring 8-02 acres situated in Survey Nos.685, 686 and 687 in deh Bhanoki Tapo Nasarpur, District Tando Allahyar. He further stated that after a long litigation, possession of the subject land was handed over to him on 22.01.2014, by the Revenue Officials in compliance with the directions of the Hon'ble Supreme Court of Pakistan vide an order dated 09.08.2011 passed in C.P No. 105-K of 2009. The complainant also alleged that on 11.11.2016, the accused persons along with approximately 20 other people duly armed with weapons, forcibly 'dispossessed him from the subject land. He further contended that this fact of dispossession was brought to the notice of the Hon'ble Supreme Court of Pakistan vide its order dated 13.01.2017, he was

advised to seek remedy from the appropriate forum. Accordingly, he filed the present complaint.

3. The learned counsel for the appellant submits that from a careful perusal of the impugned judgment, it appears that despite the fact that the ownership of the appellant over the disputed land having been admitted and established up to the level of the Hon'ble Supreme Court during earlier litigation and in consequence of which possession was handed over to the applicant, the learned trial Court nevertheless proceeded to reopen the question of ownership and on that basis acquitted the accused persons/respondents; that such an observation by the learned trial Court amounts to nothing less than sitting in judgment over the orders passed by the Hon'ble Supreme Court, and is liable to be set aside and accused are liable to be convicted; that since ownership of the disputed land had already been conclusively established up to the level of the Hon'ble Supreme Court, the learned trial Court was only required to determine whether the appellant had been again dispossessed. However, despite orders of Hon'ble Supreme Court in the matter, reopened the ownership issue and acquitted the accused persons; that the dispossession of the appellant on the fateful date was admitted by the concerned Mukhtiarkar before the trial Court and the same is evident from the order whereby cognizance was taken, yet, the learned trial Court acquitted the accused persons on benefit of doubt; that the appellant was put into possession of the disputed land pursuant to the orders of the Hon'ble Supreme Court, whereas the accused persons claimed ownership and possession of the said land, which amounts to a clear admission on their part that they have dispossessed the appellant on the fateful date, therefore, they are liable to be convicted; that the appellant's ownership over the disputed land was conclusively established up to the level of the Hon'ble Supreme Court, yet the trial Court erroneously held that the matter was of civil nature and the appellant failed to approach Civil Court and on that basis acquitted the accused persons/respondents. It is reiterated that such an observation by the trial Court amounts to sitting in appeal over the binding orders of the Hon'ble Supreme Court; accordingly, the impugned judgment is against the law, equity and natural norms of justice; that the impugned judgment is full with illegalities and irregularities, thus is not sustainable in the eyes of law; that the impugned judgment is classical example of misreading and non-reading of documents available on record and the impugned judgment is based on

conjectures and surmises not warranted under the law. He lastly prays for allowing the instant Criminal Acquittal Appeal.

4. The learned counsel for the respondents opposed the instant Criminal Acquittal Appeal and submitted that referring to a plethora of documents the Survey Nos.685, 686 and 687 were initially given an Evacuee claims to Thanweria and Mevasi, these lands were subsequently purchased by accused Dhani Bux (father of accused Jan Muhammad and Abdullah) through a registered sale deed. After the purchase, the land was allocated particular survey numbers i.e. 685, 686 and 687 and the respondents have been in continuous possession since then; that the area claimed by the appellant falls under Un-Assessed No.346 for which the revenue authorities have submitted reports from time to time and pointed out with emphasis to the judgment passed by Hon'ble High Court of Sindh in C.P No.D-63/2006 wherein it was concluded that Sillo and Salman from whom the complainant derived his claim were never put into actual possession of the land and thus there was no question on to subsequent purchaser(s) or the complainant; that during course of arguments referring to a letter/report of the Mukhtiarkar Taluka Matiari in connection with C.P No.D-105-K of 2009, and argued that the reference made by the Hon'ble Supreme Court in its' order dated 09.08.2011 pertaining to the land shown at Sr.No.6 in the said letter/report, which was revealed that un-Assessed No.346, however, the land in possession of accused is different and distinct having been duly assessed and allocated specific survey numbers; that in compliance with the order dated 09.08.2011 passed by the Hon'ble Supreme Court of Pakistan in C.P No.K-105 of 2009 and as per the report of the Mukhtiarkar dated 08-08-2011, possession of the land measuring 08-02 acres from Un-Assessed Survey No.346 was handed over to the complainant, whereas the respondents are in possession of land measuring 08-00 acres arising from Survey Nos.685, 686 and 687, as shown in column No.9 of the report; that the complainant by misusing the order of the Hon'ble Supreme Court of Pakistan, filed a false complaint against the respondents and no such incident as alleged in the complaint had occurred, thus he prays that the instant Criminal Acquittal Appeal is dismissed.

5. Without much touching the merits of the case, admittedly the possession of the case has already been decided by the Hon'ble Supreme Court of Pakistan. Such interference in the order and the possession established under the order of the Apex Court of Pakistan, cannot be marked or cannot be

looked into under any circumstances. Regardless of the factual controversy involved, such matter is only of Illegal Dispossession Act and any deeper civil nature analysis or observations is unwarranted. The learned Sessions Judge has interfered in the orders of the Hon'ble Supreme Court and has not established his case appropriately. Neither the high court nor the courts below can interfere or sit over the orders of the Hon'ble Supreme Court of Pakistan, which is final authority. Going through the facts of the case, the preliminary findings is that the appellant was in possession of the land legally as per the record. Possession was delivered not by the Revenue Authorities, Government of Sindh but they were directed to establish the possession which was done in compliance of the Hon'ble Supreme Court of Pakistan's order. Later on the matter had remained pending but in the meanwhile applicant was dispossessed by the respondents, which was clear cut violation of the law. In such circumstances, no court shall provide any relief to those, who tried to break the law and violate the already established and settled possession prescribed by the orders of the Hon'ble Supreme Court of Pakistan and established and complied by the authorities. Therefore, I am of the opinion that the possession of the appellant must be restored back as per the orders of the Hon'ble Supreme Court of Pakistan and as per the compliance report filed by the Revenue Authorities without getting much into the deeper appreciation of the evidence, which is of purely civil nature but this is a purely criminal litigation. Such possession to the appellant must be reversed back and established forthwith through the Revenue Authorities and with the assistance of local police. As far as point No.2 of the conviction of the accused/respondents is concerned only to that extent. I, hereby remand back the instant Criminal Acquittal Appeal to the learned trial Court for framing of the charge and the production of the evidence against the respondents/accused afresh, in the light of the above observations of this Court.

The instant Criminal Acquittal Appeal stands disposed of in the above terms.

JUDGE