

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Appeal No. 219 of 2023

**Appellant** : Abdul Wadood, through Mr. Fasihuz Zaman, Advocate.

**Respondent No.1** : Syed Raziullah Qadri, through Mr. Athar Uddin Abro, Advocate.

**Respondent No.2** : Fida Muhammad, in person.

**Respondents No.3-5** : The S.H.O. P.S. Superhighway Industrial Area, The Court of IV ADJ Malir at Karachi and The State, through Mr. Sardar Ali Solangi, D.P.G, Sindh.

**Date of hearing** : 25.06.2025

**Date of Judgment** : 24.07.2025

## J U D G M E N T

TASNEEM SULTANA, J. Through this Criminal Appeal, the appellant namely, Abdul Wadood has assailed the Judgment dated 25.03.2023, passed by the learned IVth Additional Sessions Judge, Malir, Karachi, (*Trial Court*), in I.D.A. Complaint No.9 of 2021 filed under Section 3/4 of the Illegal Dispossession Act, 2005, ("*the Act*") whereby respondents No.1 and 2 were acquitted under Section 265-(H(i) Cr.P.C. by extending benefit of doubt.

2. Brief facts of the case are that the appellant's mother is lawful owner of two joint plots bearing Nos.R-1& R-2, bearing No.A-133, situated at Allah Bux Goth, Sector-10, Scheme No. 33, Karachi (Na-Class 76), Deh Bati Amri, Karachi, East, which was purchased from original owner viz. Allah Bux Goth. Both plots were in lawful possession of the appellant. On 02.01.2018 respondent No. 1 had forcibly and illegally occupied over the plots in question and attempted to raise construction thereon and thereby illegally and unlawfully dispossessed, grabbed, controlled and occupied the same and dispossessed the appellant without lawful authority. Prior to this the complainant and appellant's mother filed complaint under

Section 3/4 of the Act bearing No. Nil of 2018 before the Sessions Judge, Malir, Karachi, and after notice, respondent No. 1 had filed statement before the Court that he has no concern with the plots in question nor the same are in his possession, therefore, the learned trial Court verbally directed to ASI Suhban, PS SSIA, Karachi to accompany with the appellant and handover the possession of the plots in question. Upon the statement of respondent No.1, she has withdrawn the said complaint on 30.03.2019, but she did not get possession back so they moved applications to high ups, thereafter, on 05.04.2019, appellant along with his mother visited the plots in question, where respondents extended threats for dire consequences, thereafter the appellant filed complaint U/S 3/4 of the Act.

3. Learned counsel for the appellant contended that the learned trial Court has passed impugned judgment and acquitted the private respondents of the charge only on flimsy grounds and without considering and evaluating the evidence brought on record; that the witnesses fully supported the version of complainant; that the Trial Court did not appreciate the fact that the scope of the Act is very limited and the Court exercising powers U/S 3 of the Act was not competent to give any finding with regard to the authenticity of a document whereas the Act confined the Trial Court to give findings only on illegal dispossession; that the findings of acquittal recorded by the trial Court are ridiculous. Learned counsel placed his reliance on the precedents reported as 2023 Y L R Note 2.

4. Learned A.P.G. and learned counsel for the private respondent contended that trial Court was after appreciation of evidence has recorded the impugned judgment; that the scope of acquittal appeal is different from the appeal against conviction; that the impugned judgment is based on sound reasons and it requires no interference.

5. I have heard the learned counsel for the parties and perused the record.

6. As regards the contention of learned counsel for the appellant that the version of complainant of his illegal dispossession by the respondents has fully corroborated through his witnesses and the evidence of complainant and his witnesses remained unchallenged therefore impugned judgment is liable to be set aside and the respondents may be convicted in accordance with law.

7. Needless to mention that in criminal administration of justice while hearing acquittal appeal court has to examine very consciously whether the judgment of acquittal is perverse, shocking and contrary to law. While keeping such principle in mind I have examined the impugned judgment as well as other record. It reflects that the appellant in his evidence has asserted that in the year 2018 respondents dispossessed him after break open the lock of his house, whereas his witness deposed that respondents in the year 2018 started construction work on the subject property when she resisted then the respondents informed that the owner of the property in question gave permission for construction work. The evidence of the other witnesses reflects that they just deposed that respondents illegally occupied property in question. While passing the impugned judgment, learned trial Court in relevant paragraphs 17 and 18 of the impugned judgment observed as under:

17. "The complainant has not produced the inquiry officer as witness who has conducted inquiry and recorded statements so also collected the documents regarding the property in dispute. He has also not produced any documents from inquiry report so also his memo of complaint during his evidence. As per complainant the plots were purchased from original owner but entire case is silent about the name of original owner.

The complainant has also not been able to produce original owner before the court or inquiry officer.”

18. “The complainant has not been able to produce any officer of Sindh Goth Abad Scheme or Mukhtiarkar office to support his version. He has not been able to produce any documents in his evidence. He has also not produced the police officer who has conducted inquiry and recorded statements of witnesses and then submitted such report. Complainant has not produced a single document to show that he is owner of the said property or any other person is owner of the property. Mere words of complainant does not entitle him to seek conviction of accused in a criminal case. Burden of proof is always lie upon shoulders of complainant/prosecution to prove its case beyond shadow of reasonable doubt.”

8. After going through the record it reflects that the appellant has not produced any convincing oral or documentary evidence to show that he is owner of the property in dispute and he was illegally dispossessed from the property in question. It was essential for the appellant to give all material particulars of the property in dispute and documentary proof with regard to the act of illegal dispossession. In the case law reported as *Mumtaz Hussain versus Dr. Nasir Khan and others* [2010 SCMR 1254], it has been held by the Hon’ble Supreme Court that it is incumbent upon the complainant to be the lawful owner of the property to produce certain documents to prove possession as lawful possessor of the property. Here in this case evidence of the appellant and his witnesses seems to be mere words that he purchased the plot in question in the year 2011 and subsequently in the year 2018 the respondents dispossessed him

illegally and unlawfully, but his such claim is not substantiated through convincing evidence.

9. The appellant during his evidence has neither produced any documentary evidence to show that he was owner or occupier of the subject plot or he was illegally dispossessed from the property in question. Even the inquiry report has not verified the claim of the appellant that he was ever dispossessed by the respondents. It is well settled principle of law that after getting acquittal from the trial Court, a double presumption of innocence is earned by the accused. The Appellate Court should exercise restraint in overturning an acquittal unless the judgment is found to be arbitrary, fanciful and capricious or suffered from misreading and non-reading of evidence, which is not evident in the present case. Reliance is placed on Al-Haaj Malik Muhammad Ashraf versus Javed Akhtar & others [2025 SCMR 787], in which the Honourable Apex Court observed as under:

“7. It is a well-settled principle that an acquitted accused enjoys a double presumption of innocence. An appellate court should exercise restraint in overturning an acquittal unless the judgment is manifestly perverse, arbitrary, or suffers from a glaring misreading or non-reading of material evidence, which is not evident in the present case.”

In the case of Muhammad Mansha Kousar versus Muhammad Asghar and others [2003 SCMR 477], the Honourable Apex Court observed as under:

“The law relating to reappraisal of evidence in appeals against acquittal is stringent in that the presumption of innocence is doubled and multiplied after a finding of not guilty recorded by a competent court of law. Such findings cannot be reversed, upset and disturbed except when the judgment is found to be perverse, shocking,

alarming, artificial and suffering from error of jurisdiction or misreading, non-reading of evidence... Law requires that a judgment of acquittal shall not be disturbed even though second opinion may be reasonably possible”.

Similar view was taken by the Honourable Apex Court in the case of Muhammad Tasaweer v. Zulkarnain and 2 others [PLD 2009 SC 53] in the following words:

“Needless to emphasize that when an accused person is acquitted from the charge by a Court of competent jurisdiction then, double presumption of innocence is attached to its order, with which the superior courts do not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record.”

10. The upshot of the above discussion is that the impugned judgment is based on appraisal of the evidence and thus, it does not call for interference of this Court. Consequently instant appeal against acquittal is dismissed.

J U D G E

Nadeem Qureshi P.A.