

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 553 of 2023

Appellant Bilal Ahmed	:	Through Mr. Ghulam Fareed Baloch, Advocate
The State	:	Through Ms. Amna Ansari, Addl. Prosecutor General, Sindh
Respondents No.1 & 2 Mst. Laiba & Asma	:	Through Mr. Gulsher Baloch, Advocate
Date of Hearing	:	3 rd & 31 st August 2026
Date of Judgment	:	31 st August, 2026

J U D G M E N T

MUHAMMAD SALEEM JESSAR, J.- By means of instant Cr. Appeal appellant Bilal Ahmed has assailed the Judgment dated 25.10.2023 passed by learned XI-Additional Sessions Judge, Karachi South (the trial court) vide I.D. Complaint No. 1542 of 2023, whereby the appellant was convicted for offence punishable under Section 3(2) of the Illegal Dispossession Act, 2005 and was sentenced to suffer simple imprisonment for two (2) years and to pay a fine of Rs 50,000. In case of default in payment of fine, the appellant was ordered to undergo simple imprisonment for three (3) months more. The appellant was also ordered to pay Rs.100,000/- as compensation to the complainants. Besides, in exercise of the powers / discretion vested under Section 8 of the Act, 2005, the trial Court also ordered that the appellant or any person claiming through him shall restore possession of the flat in question to Complainant No.1 within one week after receipt of the impugned Judgment and in case of violation of said direction, Incharge of PS Kalakot was directed to get the subject flat vacated by using force and restore possession of the flat to Complainant No.1.

2. Brief facts, relevant for the disposal of instant Criminal Appeal are; that respondents No1 and 2 had purchased a flat bearing No. 305, V.I.P. Arcade, Phase-1, Chakiwara Road, Lyari Quarters, Karachi in 2021, in the name of respondent No.1, on payment of full and final sale consideration by means of Sale Agreement dated 03.10.2021, executed between Mst. Bilquees and Respondent No.1. Thereafter, the owner of said flat handed over its vacant and peaceful physical possession to the complainants where they were living peacefully. On 11.06.2022, after having locked said flat, the complainants proceeded to Balochistan Hub in connection with a marriage ceremony. When they returned back on 13.06.2022, they were shocked to see that the accused Bilal Ahmed viz. the appellant herein, after breaking open the lock, had illegally and unlawfully trespassed into the flat in question and had stolen golden jewelry, cash and valuable electronic items. On enquiry the neighbors disclosed that the accused and his cronies and criminal elements had come at the spot at night time in between 2:00 to 3:00 a.m., and had broken open the lock and occupied said flat. The accused was a stranger to the complainants. They asked him to vacate the flat in question and hand over its possession to them. The accused introduced himself as Lyari Gangster. He demanded Rs.500,000/- for restoration of possession of the subject flat to them. The complainants went to Police Station Chawkiwara and made a verbal complaint on 14.06.2022 against the accused but all went in vain. The complainants thereafter lodged Complaint dated 18.06.2022 at P.S. Chawkiwara and on 22.06.2022 they filed ID Complaint in the Court of Sessions Judge, Karachi South which was transferred to the trial Court for disposal according to law.

3. SHO, PS Chawkiwara was directed to conduct investigation / inquiry into the matter. Accordingly, after conducting investigation / inquiry, the SHO submitted his report disclosing therein that the subject flat was situated within the local limits of PS Kalakot. The investigation / inquiry was thereafter directed to be conducted by SHO, P.S. Kalakot, who accordingly submitted his report after completion of inquiry, vide Order dated 21.07.2022 cognizance of the offense was taken against the accused under Section 3(2) of the Illegal Dispossession Act, 2005. Per said order, the complainants had purchased subject flat constructed on Plot No.LY-45/8, Chawkiwara, Lyari, Karachi in the year 2021 from its previous owner Mst. Bilquis for a sale consideration of Rs.22,50,000/. According to report of the SHO of P.S. Kalakot,

subject flat was in possession of the complainants and during investigation proposed accused Bilal appeared at the police station, whose statement was recorded wherein he stated that he had given loan to the husband of Complainant No.1, who did not return the same and on demand he issued four cheques for payment of said loan. The said cheques on presentation were dishonored, therefore, the accused lodged FIR against him, whereupon Complainant No.1 and her husband approached him for settlement. Consequently, they handed over him keys of the subject flat and promised to return remaining outstanding amount. However, the proposed accused failed to produce any alleged written agreement before the Inquiry Officer in respect of handing over possession of the subject flat in lieu of said loan by Complainant No.1 or her husband to him. Furthermore, during the investigation, police also recorded statement of Complainant No.2 who also supported the version of Complainant No.1.

4. The accused appeared and furnished surety. Thereafter, a formal charge was framed against the accused vide Ex: 2 to which he pleaded not guilty vide Ex: 2A.

5. In order to prove their case, the complainants examined Complaint No 1 CW1 at Ex. 3 who produced Final Sale Agreement dated 30.09.2022 as Ex:3A, Final Receipt Ex: 3B, Indenture of Sub-lease in respect of flat in question as Ex:3C.

6. Complainant No. 2 also got recorded her evidence at Ex:4. Both of them were cross-examined by the counsel for the accused. Thereafter, complainants closed their side.

7. The accused was examined under Section 342 Cr.P.C. vide Ex. 4 wherein he denied all allegations levelled by the complainants and claimed to be innocent. He alleged that the complainants have deposed falsely against him. However, he did not examine himself on oath, but he produced witness Cowkidar Faiz Muhammad Baloch in his defense, who was examined at Ex. 6 and was cross-examined by the counsel for the complainants. Thereafter, counsel for the accused closed side of the accused.

8. After formulating the points for determination and hearing advocates for the parties, the trial Court convicted the accused / appellant and keeping

in view the mitigating circumstances, as narrated in the impugned judgment, sentenced him as detailed above.

9. I have heard arguments advanced by learned counsel for the appellant, learned counsel for the respondents / complainants No.1 and 2 as well as learned A.P.G. appearing for the State and have perused the material made available before me on the record.

10. Learned counsel for the appellant submitted that the trial Court has passed impugned judgment of conviction in contravention of the law and the principles settled by the Superior Courts. It was further submitted that the trial Court has convicted the appellant / accused without properly appreciating the evidence brought on record. It was further submitted that the trial Court has not given due consideration to the defence plea and the defence evidence. It was further submitted that the SHO, PS Kalakot viz. the Inquiry Officer, has submitted incorrect report with malice after taking bribe from the complainants. It was asserted that in the inquiry report, proper and factual aspects of the case were not mentioned and the report was prepared at the whims of the complainants by receiving illegal gratification. It was further submitted that the appellant / accused did not illegally and unlawfully trespass into the flat in question but its possession was handed over to him by the husband of complainant No.1 with her consent. It was further submitted that in support of defence plea, the accused had produced documents relating to civil litigation initiated by him against the husband of complainant No.1, so also copy of FIR lodged against him; however, the trial Court did not give due weight and consideration to the same and has passed the conviction order in a hasty and mechanical manner. It was further submitted that complainant No.1 failed to prove her plea by producing tangible documents that the subject flat was purchased by her father in her favour. It was further submitted that the complainants also miserably failed to prove their allegation of stealing the golden ornaments and other articles by the appellant, despite that, the trial Court convicted the appellant under the ID Act, 2005. It was further submitted that the complainants also could not produce any documents relating to title and ownership of the subject flat, therefore, the complaint under the ID Act was not maintainable. Lastly, it was prayed that impugned judgment may be set aside and the appellant / accused may be acquitted of the charge. In support of his contentions, learned counsel for the appellant placed reliance upon the cases reported in 2024 YLR 1243 (*ROSHAN ALI and 3 others Versus*

THE STATE) and 2010 SCMR 1254 (MUMTAZ HUSSAIN Versus Dr. NASIR KHAN and others).

11. Conversely, learned counsel for the respondents / complainants No.1 and 2, while opposing the appeal, supported the impugned judgment passed by the trial Court. It was submitted that during course of evidence, it was proved by the complainants / respondents that the appellant / accused had illegally and unlawfully encroached upon the subject flat owned by complainant No.1 and forcibly dispossessed the complainants from said flat, therefore, the trial Court has rightly convicted the appellant. It was further submitted that the flat in question was owned by complainant No.1 having been purchased by her father and that her Ex-husband has no concern with said flat. It was further submitted that if the defence plea is presumed to be true that the Ex-husband of complainant No.1 had handed over possession of the subject flat to the appellant in lieu of the loan amount allegedly outstanding against him, even then it does not give protection to his illegal act of encroaching upon said flat without permission of complainant No.1 and such act was totally illegal and unlawful, as the Ex-husband of Complainant No.1, being not the owner of the subject flat, did not have any power and authority to do so, therefore, the act of the appellant/accused clearly falls within the purview of Section 3 of the I.D. Act, 2005.

12. Learned A.P.G. appearing for the State supported the impugned judgment and opposed the appeal.

13. From perusal of the record, it appears that in order to prove the charge against the accused, both complainants stepped into the witness box. Complainant No.1 categorically deposed that she and her mother viz. Complainant No. 2 had purchased the subject flat from one Mst.Bilqees through broker Haji Abdul Latif against the sale consideration of Rs.22,50,000/- on 03-10-2021 and possession of said flat was handed over by the owner to them. On 11-06-2022, they proceeded to attend a marriage ceremony in Balochistan and when they returned on 13-06-2022 they found that the accused Bilal was in possession of her flat. On 18-06-2022, she lodged such a report with P.S. Chakiwara but police did not take any action and thereafter she filed this I.D. Complaint. She prayed that possession of her flat may be restored to her. She further deposed that the accused had no concern

with the subject flat and he had illegally occupied the flat. She further deposed that the flat was purchased by her father for her.

14. Complainant No. 2 corroborated the version of her daughter Laiba, viz. complainant No.1. The complainants have produced the original documents in respect of subject flat, including registered Indenture of Sublease which reveals that the flat was originally belonging to one Abu Bakar Baloch who sold it out to Mst. Bilqees on 16.12.2016. The original Final Sale Agreement dated 03.10.2021 was also produced, which reveals that Mst. Bilqees sold out the subject flat to Complainant No. 1 for a total sale consideration of Rs 22,50,000/- out of which, an amount of Rs. 10,12,000/- was paid on 30.09.2022 while remaining amount of Rs. Rs.11,30,000 /- was paid on 03.10.2021 and Mst Bilqees executed such receipt (Exb: 3B) and possession was also handed over to Complainant No. 1. In cross examination both the complainants admitted that sale consideration was paid to Mst.Bilqees by the father of complainant No.1 and since 03.10.2021 the flat in question was in possession of the complainants.

15. In her cross-examination, Complainant No. 1 showed her ignorance to the suggestions put to her to the effect that a civil litigation in respect of the same flat was pending between her former husband and accused Bilal; that her former husband had already sold out the flat in question to the accused; that the accused had lodged FIR against her former husband at PS Kalakot with allegation of commission of fraud and in said crime he was declared proclaimed offender.

16. The appellant / accused in his Statement recorded under Section 342 Cr. P.C. took the plea that *former husband of Complainant No.1 had handed over possession of the flat in question in lieu of the amount outstanding against him in connection with some business transaction. It was further pleaded that a civil suit bearing No. 1146 of 2022 was also filed by him in the Court of XIII-Sr. Civil Judge, Karachi South which was still pending.*

17. The SHO, PS Kalakot in his Report stated that accused Bilal had lodged FIR No.66 of 2022 at PS Kalakot alleging that Zareef Khan viz. former husband of complainant No.1, had received Rs. 55,00,000/- from him for investing in the business of scrap; however, on demand he could not refund said amount; however, he issued four Cheques dated 04.11.2021, 11.11.2021 11.11.2021 and 14.11.2021 of Meezan Bank and Habib Bank which on presentation were

bounced. Thereafter, said Zareef Khan issued a fresh cheque of Rs.55,00,000/- bearing No. 1821009617 dated 28.12.2021 but it was also dishonored, therefore, FIR was registered against her ex-husband Zarif Khan on 04.03.2022. Subsequently, accused Bilal, as per defense plea, filed Civil Suit No.1146 of 2022 in the Court of XIII-Sr. Civil Judge Karachi South.

18. The defense witness Babu Baloch in his evidence, recorded vide Ex. 06, deposed that he was a watchman in the VIP Arcade serving there for four years, and his duty time was at night time from Isha prayer to Fajar prayer. According to him, Bilal used to visit the building for collecting rent from the resident of Flat No.305 located at 3rd Floor for 3/4 years. In cross examination he showed his ignorance that accused Bilal broke open the lock of the subject flat and illegally occupied it. He admitted that he was not residing in the vicinity of VIP Arcade. He further admitted that he did not know about the occupation of Bilal nor he remained concerned with the flat in question.

19. Perusal of defense plea reveals that there was financial dispute between the accused Bilal Ahmed the appellant and Zareef Khan, who was husband of Complainant No. 1. In cross-examination, complainant No.1 disclosed that in 2016 her marriage was contracted with Zareef Khan. She further clarified that in the month of October, 2022 her said marriage stood dissolved by way of *Khula*. Said Zareef Khan was not owner of the flat in question and he had no legal right to sell out or handover possession of the flat in question to the accused. It is significant to point out that according to defence version, on 21.6.2021 complainant No.1 and her husband Zareef Khan had approached to him for resolving the controversy and ultimately, they handed over the keys of the subject flat to him and promised to arrange the remaining outstanding amount. It is not understandable that when a settlement, as alleged by the appellant, had taken place in consequence whereof possession of the subject flat was handed over to him by the husband of complainant No.1, while accompanying complainant No.1, then as to why the appellant lodged FIR against Zareef Khan on 04.3.2022 i.e. after such alleged settlement. It seems that the cheque dated 28.12.2021 allegedly issued by Zareef Khan, which was bounced and ultimately FIR dated 04.3.2022 was lodged, is for the amount of Rs.55 Lac which is the total amount allegedly outstanding against said Zarif Khan and not for the remaining amount. It can also not be the case of the appellant that as the complainants had filed ID Complaint, therefore, he lodged said FIR for the alleged full amount of Rs.55 Lac, because the ID

Complaint was filed on 23.6.2022 i.e. after the lodging of aforesaid FIR by the appellant against Zareef Khan and not prior to that.

20. The accused has admitted and has not disputed possession of the complainants over the subject flat up to 11.06.2022. Notwithstanding the fact that title of the flat in question was still not transferred in the name of Complainant No.1 till the time of alleged incident, she was lawfully acquiring its possession on the basis of sale agreement entered into between herself and previous owner of the subject flat after making payment of entire sale consideration, hence she was lawful occupier of the flat and falls within definition of "occupier" as appearing under Section 3 of the Act of 2005, therefore, her possession was legal. If it is presumed and accepted that her husband Zareef Khan, during subsistence of their marriage, was residing in said flat with her, even then his stay could only be subordinate to the will and wish of complainant No 1. Neither, he was owner, nor even was the attorney of complainant No.1, hence the entry of the accused even with the consent of Zareef Khan cannot be given shelter and protection, rather the same was totally an unlawful and illegal act.

21. At this juncture, it would be advantageous to reproduce hereunder contents of Section 3 of I.D. Act, 2005:

3. *Prevention of illegal possession of property, etc.-*

- 1) *No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owner or occupier of such property.*
- 2) *Whoever contravenes the provisions of the sub-section (1) shall, without prejudice to any punishment to which he may be liable under any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provisions of section 544 of the Code.*
- 3) *Whoever forcibly and wrongfully dispossesses any owner or occupier of any property and his act does not fall within sub-section (1), shall be punished with imprisonment which may extend to three years or with fine or with both, in addition to any other punishment to which he may be liable under any other law for the time being in force. The person dispossessed shall also be compensated in accordance with the provisions of section 544A of the Code.*

22. From scrutiny of the contents of Section 3 of the Act, 2005 it seems that subsection (1) to Section 3 relates to occupying any property without having lawful authority, while subsection (2) to said Section pertains to forcible and wrongful dispossession of the owner or occupier of said property.

23. The phrase "without having lawful authority" connotes to the entry without permission or authority; or commission of any act without legal justification, whereas the phrase "forcibly" denotes use of force while committing such act.

24. It is also significant to point out that aforesaid section speaks about illegal dispossession at the hands of any person, whosoever he may be. Similarly, the person who is forcibly dispossessed, may not be necessarily the owner of the property, but it also includes a lawful "occupier" of the property. In the circumstances, even if the flat in question had not been transferred in the name of Complainant No.1 till the time of alleged offence; however, as per accused's own admission, complainants were residing and occupying the subject flat and his entry was only as a result of his alleged compromise with Zarif Khan, former husband of Complainant No.1, who was not legally competent and authorized to do so as admittedly he had not purchased the subject flat and did not possess any proprietary right.

25. From perusal of evidence adduced before the trial Court, it is crystal clear that accused Bilal entered into subject flat in absence of Complainant No.1 and so also without her consent, and dispossessed her and occupied the flat without having any lawful authority. Such act of the accused in attending circumstances reflects his *mens rea* and criminal intention to grab the property of Complainant No. 1.

26. The reason assigned and justification shown by the accused for such illegal act to the effect that; as the accused had a financial dispute with Zarif Khan, the husband of Complainant No.1, therefore, in lieu of his amount allegedly lying outstanding against said Zarif Khan, possession of the flat in question was handed over to him by Zarif Khan, is patently not only illegal and unlawful, but also seems to be ridiculous, as Zarif Khan had admittedly never purchased the flat, nor he had any ownership rights over said flat. It has also come on record, that the marriage between Complainant No.1 and Zareef Khan was subsequently dissolved. During existence of the marriage between them so also after dissolution of marriage Complainant No.1 was not

legally amenable and liable for any alleged criminal and illegal act committed by her husband or former husband. If, for the sake of arguments, it is presumed that there was any liability against Complainant No.1 herself, even then, she could not be dispossessed of her property without due course of law. The appellant / accused cannot be permitted to take the law in his own hands for the recovery of alleged outstanding amount, on the other hand, he could have resorted to the remedies available to him under the law for redressal of his grievance. If such step, as taken by the appellant / accused, is allowed and given a legal cover, then a situation of chaos, anarchy and lawlessness would emerge and the Courts are not supposed to become a party to such a gruesome act.

27. So far as the pendency of civil litigation between the parties is concerned, suffice it to refer to the well settled principal of law that even the pendency of civil litigation does not bar a person to approach the Court by invoking the provisions of Illegal Dispossession Act if he / she has been illegally dispossessed from the property which was owned and / or occupied by him / her. In this connection, reference may be made to the case *Shaikh Muhammad Naseem* reported in 2016 SCMR 1931, wherein Honourable Supreme Court held as under:

“In the impugned judgment it was also held that where civil litigation with regard to illegal dispossession from immoveable property is pending between the parties, the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained. This finding is also based on the decision of the Lahore High Court in Zahoor Ahmed's case (PLD 2007 Lahore 231, reasoning of which was adopted by three-member bench of this Court in Bashir Ahmed's case (PLD 2010 SC 661). We are of the view that such a finding is also not sustainable in law. Any act which entails civil liability under civil law as well as criminal penalty under criminal law, such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent of each other. Once the offence reported in the complaint stands proved against the accused within the confines of the provisions of the Illegal Dispossession Act, 2005 then he cannot escape punishment on the ground that some civil litigation on the same issue is pending adjudication between the parties. No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immoveable property and then seek to thwart the criminal proceedings initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law.

Therefore, irrespective of any civil litigation that may be pending in any Court, where an offence, as described in the Illegal Dispossession Act, 2005, has been committed, the proceedings under the said Act can be initiated as the same would be maintainable in law."

28. Reference may also be made to the case of *Habibullah and others Vs. Chaman and others*, reported in 2022 P.Cr. L.J. 1730, wherein a Division Bench of Peshawar High Court, while relying upon the case of Shaikh Mohammad Naeem (*supra*), held as under:

"9. No doubt, civil litigations remained pending adjudication before the parties since 1982 but the merely on the basis of civil litigation neither the proceedings in criminal matter can be terminated nor the transfer of possession in term of section 8 of the Act of 2005 can be declared illegal."

29. The case-law relied upon by learned counsel for the appellant viz. 2024 YLR 1243 and 2010 SCMR 1254 is distinguishable and not attracted to the facts and circumstances of instant case. In the first case, it was held that *after evidence of prosecution witness viz. the revenue official / Tapedar, it was crystal clear that complainant party was not the owner of property in dispute nor was lawful occupier of the disputed land*. This is not the position here, rather the accused himself admitted that the complainants were occupying the flat in dispute and were residing therein.

30. The second case is also not helpful to the appellant, rather it strengthens the case of the respondents / complainants, as it was held therein that the scope of *provisions of section 3 of Illegal Dispossession Act is wider enough to cover the class of persons mentioned in the Preamble which is applicable to dispossession of a person from property by any person including land grabber, Qabza group or land mafia*, meaning thereby that it is not confined only to land-grabbers, Qabza group or land mafia only.

31. The upshot of above discussion is; that I do not find any illegality in the impugned judgment, rather the trial Court has taken a lenient view while awarding the sentence to the accused / appellant.

32. After hearing the learned counsel for the parties, vide short order dated 31.08.2026 instant Criminal Appeal was dismissed and the impugned judgment dated 25.10.2023 penned down by the learned trial court/Additional Sessions Judge-XI, Karachi South in Illegal Dispossession

Complaint No.1542 of 2023 (Re: *Laiba and another v. Bilal and another*) was maintained. Consequently, the appellant who was present before the Court on bail was taken into custody with directions to be remanded to the Central Prison, Karachi for serving out remaining portion of his sentence. Above are the reasons for said short order.

Karachi

31.08.2026

Approved for reporting.

Judge

Head of Const:Benches