

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Acq. Appeal No.S-117 of 2021.

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of M.A.No.5870/21.
2. For hearing of main case.

Date of hearing **12.08.2024.**

Mr. Ali Gul Abbasi, Advocate for appellant.

Mr. Shahid Ali K. Memon, Advocate for respondents No.2 to 5.

Syed Sardar Ali Shah DPG for State.

ORDER

This is a Crl. Acquittal Appeal where in the proceedings of Sessions Case No.127/2020 the impugned order dated 29.09.2021 has been passed u/s 265-K Cr.P.C, whereby the proceedings of Illegal Dispossession Act filed by the present applicant were dismissed without the full length trial by way of impugned order has been assailed.

The summarized background as present on record is that the present applicant filed the complaint alleging that his family is owner of Date palm orchard by Survey No.89-4 measuring (02-00) acres, S.No.90/2 measuring (00-20) ghuntas, S.No.90/3 measuring (01-20) acres and S.No.43/1 (00-20) ghuntas situated in deh Cheel, Tapo Sangrar Taluka Rohri District Sukkur was got occupied on show of arms on 19.02.2019 by illegal and forceful occupation which was reported on the same date to the concerned Police station who however refused intervention and the higher officials also failed to respond. Whereas the private respondents who are said to Gunda

elements has also cut down wheat planted therein. That on earlier complaint as evidence on account of incident mistake of very survey numbers. Record further shows that after acquiring reports learned Sessions Court was pleased to take cognizance by order dated 01.03.2020 and BWs were issued against the respondents. It also appears from the record that an earlier respondent (who is now said to have expired) Shafi Muhammad had filed a suit for Specific performance against one Fakir Muhammad and concerned officials on 27.11.2017 by No.232/2017 refer the Court of Senior Civil Judge, Pano Aqil which was dismissed by order dated 14.12.2018 after final hearing on 03.12.2018.

Learned counsel for the appellant contends that the impugned order has been passed without looking into the merits of the matter. He further contends that the report in this regard were submitted by the revenue authorities as well as the police wherein the police had relied upon an agreement of sale whereas the revenue report fully established that the ownership of the land was available with the applicant and his family members whereas the private respondents were shown in possession. He further contended that the said report clearly established that the ownership was with the applicant of the subject land. Learned Counsel has also contended that subsequent to the said proceedings a Civil Suit was also filed by the private respondents for specific performance which has since been dismissed and it has come on record therein that the CNIC of the present applicant was subsequently issued to be as compared to the date of alleged agreement.

Learned counsel for the respondents, however, contended that an effective order cannot be passed in the matter as not only leave is

required orders thereon are required to be obtained within 60 days. It is further contended that the present applicants have concealed the agreement and that the brother of the applicant has not come-up during the said proceedings. Learned counsel also contends that as on account of Shafi Mohammad having expired further proceedings could not be taken-up on part of the private respondents by his legal heirs. Learned counsel contends that the possession of the subject land was provided to the private respondents against agreement of sale and as such the proceedings of Illegal Dispossession Act made out in the matter are not available. Learned counsel also contends that previously the present applicant/appellant had filed a criminal proceeding which was dismissed and the said order of dismissal has not been assailed. In respect of his contentions reliance is made to the cases of Muhammad Riaz v. Khuram Shehzad and another (2024 SCRM 51), Shahal v. Station House Officer, Police Station Dubar, Sukkur and 10 others (2021 YLR Note 84) and Moran Khan v. Ali Nawaz and 5 others (2023 YLR 173) contending that the said proceedings be dismissed.

Learned Additional Prosecutor General, however, does not support the impugned order contending that evidence was required to be obtained in the matter before a conclusive finding was liable to acquire in the matter. It is finally contended that in a recent pronouncement the Hon'ble Supreme Court in CrI. Petition No.66-K & 67-K of 2024 dated 15.07.2024 whereby Honourable Bench of Supreme Court was pleased appreciate that during the entertainment of the proceedings under Illegal Dispossession application the power of u/s 265-K Cr.P.C are not available without the pre-requisite and wherein evidence was required to be obtained.

Learned counsel for the appellant in the matter in rebuttal has relied upon case of Sarfaraz Ahmed v. Mst. Naheed (2014 P.Cr.LJ 1659). He further contended that the earlier referred complaint was withdrawn.

This Court specially called upon learned counsel for the respondents as to any proceedings decided or concluded on merits except the Civil proceedings referred above to which he frankly conceded that none is available, however, he states that the Supreme Court proceedings are distinguishable.

Having heard the learned counsels and gone through the record. I have gone through the order dated 29.09.2021 the same is apparently without any reasoning substantial or otherwise. The said impugned order *prima facie* has perhaps been passed under the misconception that where a civil proceedings has been initiated the proceedings under the Illegal Dispossession Act, 2005 will not lie, such is not the case. These are two distinct remedies although elements of having the same benefit may be available in both the remedies yet where the law does not itself restricts the opportunities none can be restricted in the proceedings initiated by the parties for redressal of their grievances. Undoubtedly as to determination of rights the Civil Court has a superior status however, in the present case discussion in this regard is not required as admittedly the concerned respondent had no success on the said forum. Irrespective to the forgiven *prima facie* the revenue record normally also called record of rights does not show the entitlement of the respondents to hold the possession. The period of possession shown in the report of Mukhtiarkar has restricted this Court from passing an interim order. However, it is not found arguable that the matter

requires evidence for a conclusive order that is liable to be passed in accordance with law. It is observed that neither in the impugned order nor hearing from the record any material is found present which may provide the understanding that no conviction is possible which is the basic requirement for exercising the powers u/s 265-K Cr.P.C. The discharge by exercise of powers u/s 265-K Cr.P.C, of the private respondents as such is not found available and/are mature and without supporting material being available.

In the said circumstances where the impugned order is found to be unavailable and pre-mature and without support of any material, the same is not found entertainable. Accordingly, leave to appeal stands granted and on account of the said determination having been achieved, the matter stands remanded to the learned trial Court for proceedings in accordance with law. Observing that, this matter was filed in the year 2020, let the learned District Judge/Sessions Judge ensure that a sincere attempt is made to conclude the same within a period of three(03) months.

Appeal stands allowed and disposed of in the above terms.

J U D G E

Ihsan/PS