

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.114 of 2016

Present: **Mr. Justice Nazar Akbar**

Applicant : Muhammad Hussain, through
Mr. Khwaja Naveed Ahmed, advocate.

Versus

Respondent No.1 : Saleem alias Cheater.(Nemo).
Respondent No.2 : Mst. Samina.(Nemo).
Respondent No.3 : Mst. Rabia.(Nemo).
Respondent No.4 : Fayyaz alias Pappu.(Nemo).
Respondent No.5 : Riaz alias Raju.(Nemo).
Respondent No.6 : Shakir.(Nemo).

Ms. Seema Zaidi, DPG for the State.

Date of Hearing : **13.03.2019**

Date of Decision : **13.03.2019**

J U D G M E N T

NAZAR AKBAR, J.- Applicant Muhammad Hussain has preferred this Criminal Revision Application against the order dated **15.06.2016** delivered by learned District and Sessions Judge, West Karachi in Criminal Complaint No.32/2010, whereby the learned trial Court has dismissed criminal complainant filed by him and acquitted the respondents.

2. To be very precise, the facts of the case are that the Applicant/complainant filed Criminal Complaint under Sections 3, 4 and 5 of the Illegal Dispossession Act, 2005 before the trial Court stating therein that respondents in furtherance of their common intention, on 05.05.2010 entered into the house of Applicant/complainant bearing House No.870, Phase-II, Khuda Ki Basti, Karachi without any authority or registered ownership rights over it and illegally occupied alongwith household articles by them, therefore, respondent No.1 filed criminal complaint against the respondents/accused.

3. The complaint was registered on report made by the SHO and statement of Applicant/complainant was recorded under Section 200 Cr.P.C. Formal charge was framed against respondents/accused who pleaded not guilty and claimed to be tried.

4. In order to prove the charge, the applicant/complainant examined himself at Ex:9 who produced sale agreement, receipt, general power of attorney, transfer letter dated 7.01.2009 issued by Project Officer, challan receipt, payment receipt and newspaper relating to subject property at Ex:9-A to 9-G. ASI Ghuam Mustafa was also examined at Ex.11 and then counsel for the applicant/complainant closed the side of evidence vide statement Ex;12.

5. Learned trial Court after hearing learned counsel for the parties by order dated **15.06.2016** acquitted the respondents under Section 265(i) Cr.P.C.

6. I have heard learned counsel for the applicant as well as learned D.P.G representing the State and perused the record.

7. Learned counsel for the Applicant/ complainant contended that the impugned order is based on misreading and misinterpretation of law, facts, material and documentary evidence placed on record. He further contended that the respondents illegally dispossessed the applicant/complainant and the question of dispossession has to be taken into consideration by the trial Court but the trial Court has failed to consider the same, therefore, the impugned order is liable to be set aside.

8. Conversely, learned D.P.G has supported the impugned order and contended that the trial Court has rightly passed the impugned order.

9. I have considered the arguments advanced by the applicant/complainant and learned DPG for the State. From perusal of impugned order it revealed that respondent No.1 was inducted in the subject property by the father of the applicant/complainant being its owner and the learned trial Court in the impugned order has also observed as follows:-

In the light of above facts, circumstances and discussion, I am of the opinion that the plea of the complainant is not genuine one. The plain reading of section 3(1) of the Illegal Dispossession Act, discerns that it applied to the cases wherein somebody enters into or upon any property with intention to dispossess the lawful owner or occupier of that property and thereby wants to grab, control or occupy that property. Such phenomenon is, not at all, existing in the instant case. The respondents/ accused, more particularly, Saleem was admittedly inducted in the subject property by the father of the complainant being its owner, therefore, the entry of the respondents in the subject property in question was a lawful entry. Since the respondents/accused are in lawful occupiers of subject property hence the present complaint is not maintainable and the complainant has also failed to prove his case beyond shadow of doubt. Therefore, point No.1 is answered as not proved.

Above order clearly indicates that the respondents were the lawful owner of the subject property and the applicant/complainant has failed to prove his case beyond shadow of doubt, therefore, the trial Court has rightly acquitted the respondents.

10. In view of the above facts and circumstances, the learned trial Court has rightly passed the impugned order and the same does not require interference by this Court. Consequently, this Criminal Revision Application was dismissed by short order dated **13.03.2019** by short order and these are the reasons for the same.

JUDGE

Karachi

Dated: 15.03.2019

Ayaz Gul