

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Acquittal Appeal No.53 of 2016

Date	Order with signature of Judge
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Present: Mr. Justice Nazar Akbar

Appellant : Muhammad Asif, through
Mr. Shoukat Hayat, advocate.

Versus

Respondent No.1 : Umar Billo,
Respondent No.2 : Iqbal Billo

Mr. Faqeer Ghazi Darban Hisbani,
Advocate for Respondents No.1 & 2.

Respondent No.3 : Qazi Muhammad Fareed, through
Mr. Imdad Ali Channa, advocate.

Respondent No.4 : The State
Ms. Seema Zaidi, D.P.G for the State.

Date of hearing : **17.04.2019**

Date of decision : **10.05.2019**

JUDGMENT

NAZAR AKBAR, J:- This Criminal Acquittal Appeal is directed against the judgment dated **11.01.2016** passed by the XIIIth Judicial Magistrate East, Karachi whereby an application under Section 249-A Cr.P.C filed by the accused/respondents in Private Complaint No.4630/2012 for their acquittal from the charges under **Sections 468/471/34 PPC** has been allowed.

2. Brief facts of the case as narrated in FIR are that Complainant namely Muhammad Asif in **December, 2012** lodged private complaint alleging therein that his mother namely Hajiani Sher Bano is the owner of Plot No.136 Block-7 and 8 Karachi Memon Cooperating Housing Society Karachi and Respondent No.3 namely

Qazi Muhammad Fareed on **12.05.2009** encroached over the said plot in connivance with Respondents No.1 and 2, Respondent Iqbal Billo has managed the forged documents of the said plot.

3. The accused/respondents, after formal charge was framed, preferred an application under Section 249-A of the Cr.P.C. Learned trial Court after hearing learned counsel for the parties, by order dated **11.01.2016** acquitted accused/ Respondent No.1 and 2 and even Respondent No.3 who was not before the Court. Therefore, the appellant/ complainant has filed the instant Criminal Acquittal Appeal.

4. I have heard the learned counsel for the appellant, learned D.P.G and counsel for all the Respondents and perused the record as well as written arguments filed by the appellant.

5. In the written arguments the appellant has only filed only five case-laws and photostat copies documents as annexure 1-A to 1-H in respect of the property which in fact is the cause of dispute between the appellant and the Respondents:-

1. Karima Bibi vs. The State and others (**2012 P Cr.L J 1610**);
2. Akhlaq Hussain Kayani vs. Zafar Iqal Kiyani and others (**2010 SCMR 1835**);
3. Syed Liaqat Shah vs. Vice-Chancellor, University of Engineering and technology, Peshawar and others (**2018 SCMR 1661**);
4. Kashif Khan vs. The State (**PLD 2008 Karachi 255**);
5. The State through Advocate-General, Sindh High Court of Karachi vs. Raja Abdul Rehman (**2005 SCMR 1544**).

The record shows that this is appellant's third attempt to prosecute the Respondents through criminal Court. The first attempt was on **14.09.2009** in the shape of FIR No.1007/2009 under **Sections 448**,

380 and **34 PPC** registered at P.S Ferozabad. The Respondents, after three years trial, on **17.12.2012** were acquitted of the charges of house trespass and theft. The second attempt was made by the appellant on **02.09.2009** when he filed a direct complaint No.105/2009 under **Sections 3** and **4** of the Illegal Dispossession Act, 2005 in which the application under Section 265-K of the Cr.P.C filed by Respondent No.3 was dismissed by the trial Court by order dated **17.05.2010** and Respondent No.3 challenged the said order before this Court in Criminal Miscellaneous Application No.75/2011 which was allowed by order dated **31.05.2012** and the proceedings of Illegal Dispossession Act 2005 against Respondent No.3/accused were quashed.

6. The accused/Respondents were acquitted on **17.12.2012** in FIR No1007/2009 and the appellant did not challenge the said acquittal order, nor he has challenged quashment of complaint under Illegal Dispossession Act, 2005. Then on the basis of a so-called enquiry of Anti-corruption Department which was initiated at the behest of appellant, the appellant has preferred direct complaint in **2012** as he has no face to go to lodge FIR in respect of same issue for which he had earlier registered FIR No.1007/2009 under **Sections 468/471** of the PPC and failed to prove charges. Therefore, without first approaching the police the private complaint under Section 200 of the Cr.P.C was not even otherwise maintainable for the offence under Sections 468/471 of the PPC since in earlier criminal complaint the appellant has based his complaint on the basis of same documents. The first requirement of Section 200 of the Cr.P.C is to approach the police for lodging an FIR and in case of refusal by police to register the case, the remedy of direct complaint can be availed. Not only the two criminal proceedings have been decided in

favour of Respondents. The respondents are in lawful occupation of the property in dispute on the basis of documents which are sought to be declared forged in two different criminal Courts and in both occasions the appellant has failed. The appellant had also filed suit bearing suit No.920/2017 which has also been dismissed.

7. In view of the above, no case is made out for interference in the acquittal order by this Court, therefore, this Crl. Acq. Appeal is dismissed.

JUDGE

Karachi Dated: 10.05.2019

SM
Ayaz Gul