

**IN THE HIGH COURT OF SINDH, KARACHI**  
**Crl. Appeal. No. 17 of 2013**

Date	Order with signature of Judge
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1. For hearing of M.A No.8458/2017 (Ex/A)
2. For hearing of main case.

**30.07.2018**

Mr. Shamroz Khan Termizi, advocate holding brief for  
Mr. Muhammad Nawaz, advocate for appellant.

Mr. Naseer Ahmed Khan, advocate for the Respondent No.2.

Ms. Rahat Ahsan, Addl. P.G & Mr. Abrar Ali Khichi, D.P.G.

Appellant present in person.

**J U D G M E N T**

**NAZAR AKBAR, J.** This appeal is pending since 2013 against the conviction under Section 2(3) of Illegal Dispossession Act, 2005. The appellant has been sentenced five years imprisonment and Rs.300,000/- as compensation to Respondent No.2 / Complainant. The appellant is on bail and present in Court but his counsel is absent as usual. In terms of the impugned judgment the appellant has already handed over possession of the disputed property to Respondent No.2 / complainant. Such fact is also mentioned in the order dated **11.04.2018**, which is reproduced as follows:-

“Appellant present on bail along with his counsel. Learned counsel for the appellant submits that the possession of disputed property has been restored to the complainant / respondent in terms of judgment dated 05.01.2013; however, he seeks time to prepare his brief. Such his statement is affirmed by Mr. Naseer Ahmed Khan, advocate representing the Respondent No.2; however, he has no objection for adjournment. DPG has also no objection. By consent and as suggested, adjourned to 08.05.2018”.

2. Learned counsel for the appellant had always been seeking time and even on 08.5.2018 and two subsequent dates he

remained absent and today again he is absent. His brief is held by Mr. Shamroz Khan Termizi, advocate. The appellant in presence of the counsel holding brief states he is not willing to pursue claim over the property in dispute provided compensation amount (Rs.300,000/-) is forgone by Respondent No.2 / Complainant and the sentence awarded is also waived by reducing the same to the period already spent by him in jail till his release on bail. Learned counsel for Respondent No.2 / Complainant has made a statement in writing that his client has given consent to forgo compensation amount of Rs.300,000/- imposed by the trial Court in the impugned judgment and he further states that if the appellant does not pursue or does not claim anything adverse to the interest of Respondent No.2 in respect of the property in dispute, he has no objection to even reduction of punishment of imprisonment to the period already undergone by the appellant. His statement is taken on record.

3. To a query from the Court that how an appellate Court can alter the conviction merely because the complainant has no objection, learned Addl. P.G Ms. Rahat Ahsan assisted the Court and supported the contention of Mr. Naseer Ahmed Khan, advocate for the respondent No.2 that the appellate Court has power to reduce the sentence. She has referred to **Section 423 (1) (b) and (d), Cr.P.C**, which are reproduced as under:

**“423. Powers of Appellate Court in disposing of appeal:-** (1) The Appellate Court .....  
.....  
....., if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—  
  
(a).....  
.....  
  
(b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the

accused, or order him to be tried by a Court of competent jurisdiction subordinate to such Appellate Court or [sent] for trial, or (2) after the finding, maintaining the sentence, or, **with or without altering the finding, reduce the sentence**, or (3) with or without such reduction and **with or without altering the finding, alter the nature of the sentence**, but subject to the provisions of Section 106, sub-section (3), not so as to enhance the same;

(c).....  
.....

(d) make any amendment or any consequential or incidental order that may be just or proper.”

4. Mr. Abrar Ali Khichi, DPG has referred to the case of Taj Muhammad and another v. Muhammad Anwar (2009 YLR 559 (Karachi). The facts of the cited case and the case in hand are very much identical. Relevant observations of the case law are reproduced below:-

“At this stage, a statement/undertaking dated 21.10.2008 has been filed duly signed by the complainant and the learned counsel as well as by the respondents Nos.1 and 2 so also their learned counsel stating therein that complainant could not press conviction, if appellants undertake not to interfere/dispossess the complainant from the subject plots in future. **Appellants undertake that they will not interfere/dispossess complainant from subject property in future.** Since accused are remorseful on their act and want to reform themselves and **complainant do not oppose if they may be acquitted / or sentence be reduced and not pressing for conviction, then legal position is that sentence and conviction awarded to the appellants by the learned District and Sessions Judge, Karachi West in a Direct complaint No.4/2005 filed by the respondent No.1 against appellants and others under sections 3-4 of the Illegal Dispossession Act 2005 can be reduced by taking a lenient view as under section 345, Cr.P.C compromise is being accepted and sentence reduced to already undergone.** Reliance is placed to a case of Jan Muhammad v. The State 1988 MLD 2734 and Kamir and another v. The State (NLR 1988 Criminal 620) respectively”.

5. In view of above facts and law, this CrI. Appeal is also allowed in terms of compromise/statements at the bar that the complainant does not press for conviction and the appellant would not interfere with the possession and title of the complainant on the property in dispute. Therefore, in exercise of the powers conferred on the appellate Court under Section 423(i)(b) Cr.P.C, the impugned judgment is modified and the sentence awarded to the appellant is reduced to the period of his confinement already undergone and order of compensation is also recalled since the complainant has already forgone. Consequently, the bail bond submitted by the appellant is discharged and surety furnished by him is also discharged. The surety may be returned by the Nazir to the surety once he appears before the Nazir after proper verification and identification.

6. The CrI. Appeal is allowed in the above terms.

**JUDGE**

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