

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Cr. Acquittal Appeal No. S- 04 of 2017

04.09.2020

Mr. Samad alias Saddam Khaskheli, Advocate for the appellant.

Ms. Rameshan Oad, A.P.G.

Mr. Sajid Ali Soomro, Advocate for respondents No.1 to 3.

=

JUDGMENT

ABDUL MAALIK GADDI, J- The captioned acquittal appeal is directed against the order dated 08.12.2016 passed by learned Additional Sessions Judge-I, Kotri in I.D Complaint No.08 of 2014, filed by the appellant against respondents, whereby the learned trial Court after hearing the learned counsel for the parties on application moved by the private respondents under section 265-K Cr.P.C. and dismissed the said direct complaint and as a result thereof acquitted the private respondents.

2. The facts of the case are that father of the complainant namely Muhammad Essa owned one open plot bearing No.99, admeasuring 9065 Sq. Ft. situated in Village Sain Dino Mallah, Deh Railo, Taluka Kotri, District Jamshoro and after his death complainant is his lawful legal heir and successor in respect of said plot. On 07.02.2014, when complainant came at his house in the evening, his family members informed him that some people were doing construction at the above said plot. On this, complainant alongwith one Habibullah Panhwar went at the said plot where they saw that private respondents were present who extended threats of killing to complainant party. Thereafter, complainant went to police station to lodge his report but police did not pay any attention, therefore, complainant filed present direct complaint.

3. After framing the charge against respondents, the trial court examined two witnesses. However, while trial was in progress, private respondents moved an application under section 265-K Cr.P.C.

thereby sought their acquittal on the ground that prosecution witnesses so examined have not supported the prosecution case. Notice of said application was issued to the private respondents and after hearing the learned counsel for the parties, the learned trial Court allowed such application and as a result thereof acquitted the respondents / accused through impugned order, hence this Criminal Acquittal Appeal.

4. Learned counsel representing the appellant submits that the impugned order is not sustainable under the law as there was sufficient evidence available on record against the respondents but the trial Court brushed aside the same, more particularly, the respondents were acquitted of the charge without assigning any valid reason; that only two prosecution witnesses have been examined and three material prosecution witnesses viz one eye-witness and two official witnesses were remained to be examined as well as original documents were to be produced by the appellant; but, the trial Court without doing so has passed the impugned order hurriedly, which is not sustainable; apart from this, the appellant has proved his case against the respondents; that the law applicable to all persons who enter into or upon immoveable property and dispossess, grab, control or occupy it without having lawful authority to do so; that the appellant has proved his ownership and illegal dispossession from the subject land at the hands of respondents. He has argued that the P.Ws so examined have fully supported the version of the appellant; that the act of respondents, amounts to offence under section 3 (2) of the Illegal Dispossession Act, therefore, the case may be remanded back to trial Court for recording the evidence of remaining prosecution witnesses and then deciding the matter on merits.

5. Conversely, learned A.P.G duly assisted by learned counsel for private respondents contended that there is no gross illegality, irregularity or infirmity in the impugned order as there are sufficient reasons and grounds on which the trial court has passed the impugned order; that since in their evidence complainant and his witness Sikandar have contradicted each other on material points; thus, the complainant has failed to prove his case, therefore the trial Court has rightly acquitted the private respondents under section 265-K Cr.P.C; that the complainant has failed to prove his ownership on the subject plot by producing original record as well as adducing

cogent, sound and unshaken evidence with regard to his forcible dispossession from the said plot; that neither the appellant nor his witness has supported the case; that the case of appellant does not come within the ambit of Illegal Dispossession Act; that no act of forcible dispossession has been committed by the respondents. Lastly they prayed for dismissal of this acquittal appeal.

6. Arguments heard and record perused. During the course of arguments, learned counsel for the appellant has submitted that the trial Court without concluding the evidence of appellant / prosecution side has passed the impugned order without keeping in view that three material witnesses (one eye and two official witnesses i.e. concerned Mukhtiarkar and SHO) were remained to be examined so also original documents with regard to subject plot were also to be brought on record, has passed the impugned order on the application moved u/s 265-K Cr.P.C. by private respondents, which is interlocutory in nature and not final; therefore, the impugned order calls for interference. When this position was confronted to learned counsel for the private respondents as well as learned A.P.G, they both have no satisfactory reply with them.

7. The question arises in this matter is that whether the respondents have illegally and forcibly dispossessed the appellant from the subject plot or otherwise. Appellant Muhammad Yousif and his witness Sikandar in their evidence before the trial court have more or less supported their case; however, without providing opportunity to appellant to bring in record original documents with regard to subject property and examine his remaining material witnesses, the trial Court has passed the impugned order hurriedly, which does not find support from law of land and also not appeal to a prudent mind. It is a settled proposition of law that every criminal case has to be decided on merits after providing full opportunity to both sides to bring on record whatever evidence or other material they have in their possession or otherwise in support of their stance. Here, the trial Court without concluding the evidence of appellant and providing him opportunity to bring other documentary evidence on record, has passed the impugned order on application u/s 265-K Cr.P.C, which is interlocutory and not final. During the course of arguments, when this position was confronted to learned A.P.G and learned counsel for the private respondents, they have again no satisfactory answer with them.

8. For what has been discussed above, since the issue involved in the matter requires detail deliberation; however, the learned trial Court passed the impugned order and acquitted the respondents in hasty manner without concluding the prosecution evidence, therefore, it would be appropriate to remand the matter back to the trial Court for deciding the same on merits. Accordingly, the instant acquittal appeal is allowed and the impugned order is set aside. Resultantly, the case is remanded back to the trial Court with direction to allow the appellant / complainant to examine his remaining witnesses and bring original title documents with regard to subject plot on record and after hearing both parties' counsel, decide the same on merits as early as possible preferably within a period of two months from the receipt of this order.

JUDGE

S