

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**  
**Criminal Appeal No.S-232 of 2016**

Appellants: Ali Nawaz son of Arz Muhammad, 2) Abdul Razaque son of Ali Nawaz, 3) Hussain son of Ali Nawaz, through Mr. Muhammad Ayooob Qassar, Advocate.

Respondent: The State, through Ms. Safa Hisbani, APG.

Complainant Ramzan son of Sulleman Pusio, through Mr. Ahsan Zahoor Baloch, Advocate.

Date of hearing: 02-03-2021.

Date of decision: 02-03-2021.

**JUDGMENT**

**IRSHAD ALI SHAH, J:** The facts in brief necessary for disposal of instant appeal are that that it was the case of the private respondent that he was allotted four acres of the land by barrage authorities in Deh Akro, Tapo Daleji Taluka and District Badin. After full payment, the transfer order whereof was issued and then such entry was recorded in record of right, in his favour. Subsequently, the appellants dispossessed him therefrom. It was in these circumstances, he filed a Direct Complaint under sections 3 & 4 of the Illegal Dispossession Act, 2005. It was brought on record.

2. At trial, the appellants denied the charge, the private respondent in order to prove it, examined himself, ASI Muhammad Siddique and Mukhtiarkar Ali Zulfiqar and then closed his side.

3. The appellants in their statements recorded under section 342 Cr.P.C denied the allegation leveled against them by the private respondent by pleading innocence. They examined none in their defence or themselves on oath. On conclusion of the trial, they for an offence punishable under section 3 (2) of Illegal Dispossession Act, 2005 were convicted and sentenced to undergo R.I for five years with fine of Rs.30,000/- each and in default whereof to undergo simple imprisonment for three months with direction to S.H.O, P.S. Badin to restore the possession of the subject land to the private respondent, by way of Judgment dated 29.11.2016 by 1<sup>st</sup> Additional Sessions Judge Badin which is impugned by the appellant before this Court by preferring the instant appeal.

4. It is contended by learned counsel for the appellants that the land in their possession is other than the one which is allotted to the appellants and it is in their possession since their forefathers and learned Trial Court have convicted and sentenced the appellants on the basis of improper assemsent of the evidence. By contending so, he sought for acquittal of the appellants. In support of his contention, he relied upon the case of *Hassan Vs. Ghulam Hussain and 9 others* [2014 YLR 179].

5. Learned A.P.G for the State and learned counsel for the private respondent by supporting the impugned judgment has sought for dismissal of instant appeal by contending that the

appellants are in the possession of the subject land without lawful authority.

6. I have considered the above arguments and perused the record.

7. The Complaint filed by the private respondent as per narration made therein was second in series. Earlier one was withdrawn. The withdrawal of the earlier complaint as per section 248 Cr.P.C amounts to acquittal of the accused. Admittedly, the subject land was allotted to the private respondent by Barrage Department. It was out of un-assessed land block. Nothing has been brought on record by the private respondent which may suggest that he actually was put into possession of subject land, on its allotment by the barrage department, which appears to be significant. The private respondent during course of his examination was fair enough to admit that he had also moved an application for demarcation of land before Sessions Court. If it was so, then it goes to suggest that the dispute with the private respondent was to the extent of identification of the boundaries of the land allotted to him. As per Mukhtiarkar Ali Zulfiqar the appellants are residing in their houses in subject land since long. To that extent, he is also supported by ASI Muhammad Siddique. It goes to suggest that no forcible dispossession of the private respondent from the subject land has taken place. In these circumstances, the involvement of the appellants in the instant

case is appearing to be doubtful and they are found entitled to such benefit.

8. In case of *Muhammad Masha vs The State (2018 SCMR 772)*, it was observed by the Hon'ble Supreme Court of Pakistan that;

*"....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted"*

9. Having discussed above, the conviction and sentence recorded against the appellants by way of impugned judgment are set-aside, consequently they are acquitted of the offence for which they have been charged, tried and convicted by learned trial Court, they are present in Court on bail, their bail bonds are cancelled and sureties are discharged.

10. The instant appeal is disposed of accordingly.

JUDGE