

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.**

Cr.Acq.Appeal No.S- 204 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objections.
2. For hearing of main case.

01.11.2019.

Mr. Meer Ahmed Mangrio, advocate for appellant
Mr. Liaquat Ali Larik, advocate for respondents No.2
&3.

Ms. Rameshan Oad, A.P.G

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The facts in brief necessary for disposal of instant acquittal appeal are that the appellant / complainant filed a direct complaint for prosecution of private respondents for offence punishable u/s 3/4 of the Illegal Dispossession Act, 2005 for having occupied the plot illegally, which was owned by her late husband Hamid Ali.

2. On due trial, the private respondents were acquitted of the charge by learned Ist. Additonal Sessions Judge, Kotri vide judgment dated 08.11.2016, which is impugned by the appellant before this Court by preferring the instant acquittal appeal.

3. It is contended by learned counsel for the appellant that learned trial Court has recorded acquittal of the private respondents on the basis of misreading / non-reading of the evidence, otherwise, the appellant / complainant was able to prove its case against private respondents beyond shadow of doubt. By contending so, he sought for appropriate action against private

respondents. In support of his contention he has relied upon case of **Malik Muhammad Akram vs Muhammad Qahir and another (2010 P.Cr.L.J Quetta 666)**.

4. Learned A.P.G for the State and learned counsel for the private respondents by supporting the impugned judgment have sought for dismissal of instant acquittal appeal by contending that the appellant / complainant have put an attempt to resolve her dispute with the private respondents over inheritance of the property by involving them in a false case. In support of their contentions they relied upon case of **Usman Ali vs Additional Sessions Judge, Toba Tek Singh and 9 others (2017 P.Cr.L.J 155 Lahore)**.

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

6. Admittedly, the acquittal of the private respondents has been recorded on direct complaint. As per sub-section (2) to section 417 Cr.P.C, such acquittal is to be impugned after grant of **special leave to appeal**. In the instant matter, no special leave to appeal is sought for by the appellant / complainant on filing of the instant acquittal appeal before this Court. Sub-section (4) to section 417 Cr.P.C prescribes that when **special leave to appeal** (in such like cases) is refused then no appeal from the order of acquittal shall lie. In the instant case as said above, no **special leave to appeal** is sought for by the appellant / complainant on filing of instant

acquittal appeal. What to talk of its grant or refusal. Such omission on the part of the appellant / complainant has made the instant acquittal appeal to be liable to its dismissal, on such score alone.

7. On merits of the case, learned trial Court has recorded the acquittal of the private respondents by extending them benefit of doubt for valid reason which reads as under;

“Besides, the complainant had also lodged the FIR No.30/2014 at PS Jamshoro of the alleged incident dated 09.02.2014 of this direct complaint after 15 days of its occurrence in which she had only nominated accused Hashim and mentioned her address as House No.C-163, Phase-II, Sindh University Society Jamshoro instead of disputed plot/house No.72. Later on, above FIR was disposed of by police under **C-Class** and report of police was accepted by II-CJ & JM Kotri under order dated 31.03.2014, certified copy of which, produced by accused at Ex.11/D in which court pointed out that the mother in law Mst. Khanzadi W/o Muhammad Hussain of complainant Mst. Shahnaz had filed a **Human Rights Application** before the Court of Learned Court of Sessions Jamshoro @ Kotri which was dismissed by the court under order dated 18.03.2014 with the observation that **“Dispute between the parties is over inheritance of the landed property and only civil court is competent to resolve this issue. Accordingly parties were advised to approach Civil Court of the competent jurisdiction.”** However, in spite of disposal of above FIR under C-Class by police and approved by concerned Magistrate as well as despite above observation of Honourable Sessions Court Jamshoro @ Kotri as well as above learned Magistrate, that there was dispute between the parties over inherited property and parties should approach concerned civil court for receiving their due shares as per law of inheritance, the complainant filed instant complaint by twisting and converting the facts of the civil in nature litigation into criminal litigation.”

8. The case law which is relied upon by learned counsel for the appellant / complainant is on distinguishable facts and

circumstances. In that case right from Civil Court up to Honourable Supreme Court, the possession of the disputed property was found to be with the complainant therefrom the complainant was dispossessed by the accused. In the instant matter, there is no finding of Civil Court or any other Court with regard to the fact that the complainant has been in possession of the disputed property. What to talk of its dispossession of the appellant / complainant allegedly at the hands of the private respondents.

9. In case of **State & ors vs. Abdul Khaliq & ors (PLD 2011 SC-554)**, it has been held by the Hon'ble Apex Court that;

“The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on

the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities”.

10. Nothing has been brought on record, which may suggest that the private respondents have been acquitted by trial Court in arbitrary or cursory manner, which may justify this Court to make interfere with the acquittal of the private respondents, by way of instant Cr. Acquittal Appeal. It is dismissed.

JUDGE

Ahmed/Pa