

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

Cr. Acquittal Appeal No.S- 116 of 2021

Date of Hearing: 24.05.2021
Date of Judgment: 24.05.2021

Appellant: Ali Dino s/o Soomar Unar, through
Mr. Aslam P. Sipio, Advocate.

The STATE: Through Mr. Shahid Shaikh, D.P.G
Sindh, who waives the notice.

J U D G M E N T

NAIMATULLAH PHULPOTO, J.- Through this Criminal Acquittal Appeal, appellant / complainant has impugned the judgment dated 03.05.2021 passed by learned Additional Sessions Judge, Hala in I.D Complaint No.18 of 2020 [Re-Ali Dino v. Muhammad Juman @ Jumoo and another]. On the conclusion of trial, vide judgment dated 03.05.2021, respondents No.1 and 2 / accused were acquitted of the charge however, by awarding compensatory costs of Rs.50,000/- to be paid by appellant / complainant to each accused u/s 250 (2-A) Cr.P.C.

2. Brief facts of the prosecution case as disclosed in the impugned judgment are as under:-

“Brief facts of case of complainant Ali Dino are that he filed I.D Complaint against the accused alleging that he has agricultural land on the khata bearing Survey No.216/4 admeasuring 1-14 acres deh Suhrabpur, Tapo Zahir Pir, Taluka Saeedabad District Matiari. On

20.08.2020 at 09:00 a.m. accused Muhammad Juman @ Jumoo with single barrel gun, Saleem with hatchet and two other unknown persons with spades came on his land, and illegally dispossessed him on the points of weapons, he immediately approached to nek mards but in vain. On 07.09.2020, he went to PS for registration of FIR but police avoided hence he filed present I.D Complaint.”

3. The complaint was brought on record and process was issued against the accused.

4. Learned Trial Court framed the charge against accused. Accused pleaded not guilty and claimed to be tried.

5. At the trial, in order to prove his case, complainant examined himself, ASI Ghulam Hussain and Clerk of Mukhtiarkar (Revenue) Saeedabad.

6. Trial Court recorded the statements of accused under Section 342 Cr.P.C, in which they claimed false implication in this case and denied the allegations leveled by complainant.

7. Learned trial Court after hearing learned counsel for the parties and assessment of the evidence vide judgment dated 03.05.2021 acquitted the accused / respondents. Hence this Criminal Acquittal Appeal.

8. I have heard the learned advocate for appellant / complainant and learned D.P.G who is present in Court in other cases and waives notice of this acquittal appeal.

9. Learned advocate for the appellant / complainant has mainly contended that the impugned judgment of the trial Court is based on misreading and non-reading of the evidence. It is also argued that the trial Court has disbelieved strong evidence without assigning

sound reasons and prayed for converting the acquittal of the accused to the conviction. In support of his contentions he has placed reliance on the cases reported as Mst. Gulshan Bibi and others v. Muhammad Sadiq and others (PLD 2016 Supreme Court 769) and Ali Ghulam Laghari and 4 others v. Chaudhary Muhammad Aslam Gill and 34 others (2009 YLR 1252).

10. Learned D.P.G supported the impugned judgment.

11. Before discussing the impugned judgment, it is observed that it is settled law that ordinary scope of acquittal appeal is considerably narrow and limited and obvious approach for dealing with the appeal against the conviction would be different and should be distinguished from the appeal against acquittal because presumption of double innocence of accused is attached to the order of acquittal. In the case of **Zaheer Din v. The State (1993 SCMR 1628)**, following guiding principles have been laid down for deciding an acquittal appeal in a criminal case:-

“However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly visualized from the cited and other cases-law on, the question of setting aside an acquittal by this Court. They are as follows:--

(2) The acquittal will not carry the second presumption and will also thus lose the first one if on pints having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.

(3) In either case the well-known principles of reappraisalment of evidence will have to be kept in view while examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observations of some higher

principle as noted above and for no other reason.

(4) The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous.”

12. In the present case, acquittal recorded by trial Court is based upon sound reasons. Appellant failed to produce utility bills of electricity and gas for the months of July 2020 and August 2020. Respondents have raised plea that they had purchased the land from the father of complainant in the sum of Rs.50,000/-. In such circumstances, it was the duty of complainant that he should have produced his father for evidence before the trial Court. Evidence of the main witness was withheld by the complainant. Adverse presumption could be drawn against the appellant under Article 129(g) of Qanun-e-Shahadat Order, 1984. Findings of the trial Court mentioned in para No.11 of the impugned judgment are based upon sound reasons and require no interference by this Court as regards to the acquittal of respondents / accused is concerned. Para 11 of the impugned judgment is reproduced as under:-

“11. The evidence of complainant on the record revealed that the land in dispute was agricultural land to the extent of 1-14 acres which was as per his claim remained in possession before 20.08.2020. In cross examination, he admitted that he could not produce land revenue receipts for establishing his possession before 20.08.2020. He further admitted that the land in dispute was situated in

village Tayyab Dahri, and it was valuable plot. The said admission has falsified his version in complaint and it to the contrary corroborated the defense plea that land in dispute was in fact a plot. He claimed that at the time of incident people of the village were present. Admittedly nobody from said villagers could be produced by him as witness of the incident. On the contrary the accused have produced 03 villagers, who disclosed that land in dispute was actually belonging to father of complainant, which was purchased by the accused but mutation entry could not be taken place. The said co-villagers /DWs further disclosed on oath that accused remained in possession of land in dispute for 30 years, and they have constructed houses on it. In cross examination complainant further admitted that it is impossible to get electric and gas connections within one week. The accused have filed utility bills of electricity and gas indicating payment for the month of July 2020, August 2020. The said meters were in disputedly installed in the houses situated over the land in dispute. If land in dispute was in possession of complainant before 20.08.2020, then how houses were constructed before said date, and as to how the electric and gas connections were installed in the houses before the alleged date of dispossession. The said facts lead to conclusion that forcible dispossession was never taken place on 20.08.2020, and the accused remained in possession of land in dispute for long time. The defense evidence produced by the accused is confidence inspiring which indicates that the accused got possession of the land with the consent of father of complainant. The record reveals that before of commencement of trial accused had filed objections on complaint in which disclosed that they had purchased the land from father of complainant and got possession after payment of Rs.50,000/-. In said situation it was duty of complainant to produce his father in witness box but said best evidence with withheld hence said omission leads to inference under article 129 of Qanun-e-Shahdat Order 1984 that if he had been produced as witness he would have not supported the version of complainant. The dispute between the parties appears to be of civil nature but complainant has tried to convert it into criminal liability, thereby wasted the time of the Court and also dragged the accused in criminal proceedings unnecessarily instead of approaching before the civil Court for getting remedy in accordance with law. The complainant filed false and vexatious complaint against the accused hence he is liable to action U/S 5 (4) of Illegal Dispossession Act 2005. In view of said reasons the aforesaid points are answered as not proved.”

The trial court while acquitting the respondents has ordered for payment of compensation to the complainant. There is no provision

in Illegal Dispossession Act for payment of compensation as already held by this Court in the case of Ali Ghulam Laghari (Supra).

Relevant portion is reproduced hereunder:-

“The trial court while acquitting the respondents has not committed any error and has rightly passed the order. However, as far as payment of compensation is concerned, there is no provision in the Illegal Dispossession Act for payment of compensation and the same appears to be imposed under section 250, Cr.P.C. as section 9 provides that unless otherwise provided the provision of Cr.P.C. shall apply to all proceeding under this Act. Section 250, Cr.P.C. empowers the Magistrate to award compensation to the accused for false and either frivolous or vexatious complaint against him. The powers under the section can be exercised after show-cause notice. From the order, it appears that no show-cause notice for payment of compensation has been issued by the trial court.”

Hence impugned judgment to the extent of compensation is not sustainable in law and same is set aside.

13. Learned Counsel for the appellant / complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. It is by now well settled that acquittal once granted to an accused cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

15. For the above stated reasons, this Criminal Acquittal Appeal is without merit and the same is dismissed. However, the judgment of the trial Court is partly set aside only to the extent of awarding the accused Juman and Saleem compensatory costs of Rs.50,000/- each.

JUDGE