

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Appeal No. 214 of 2017

Date Order with signature of Judge

12.07.2018

Mr. Syed Khurram Kamal, advocate for appellant a/w appellant
Mr. Zahoor Shah, D.P.G for the state.
Mr. Muhammad Daud Narejo, advocate for respondent/
complainant.

Muhammad Saleem Jessar, J:- Through instant CrI. Appeal, appellant Akhtar Hussain has assailed Judgment dated 04.05.2017 passed by learned IVth Additional Sessions Judge, Karachi (Malir) in I.D Complaint No.46/2016, whereby the trial Court, after full dressed trial, has found appellant to be guilty of the offence punishable under Section 3 sub-section 2 of the Illegal Dispossession Act, 2005 and sentenced him to undergo R.I for three (03) years with fine of Rs.30,000/-. In case of default of payment of fine, the appellant was ordered to suffer S.I for three (03) months more. It was further ordered that appellant shall hand over the vacant and safe possession of plot No. R-45 Sector 18-A, Block-3 admeasuring 120 sq. yards situated at Quetta Town Cooperative Housing Society, Karachi. On 23.06.2017 the counsel for appellant made a statement to the effect that possession of property in dispute would be handed over to the complainant/respondent within seven (07) days and, therefore, his application under Section 426 Cr.P.C being C.M.A No.5059/2017 may be heard. His said statement was not opposed by the counsel for respondent/complainant who recorded his no objection. Upon said statement/undertaking the operation of impugned judgment dated 04.05.2017 was suspended and application under Section 426 Cr.P.C filed by the appellant was allowed. Consequently, the appellant was released on bail. After

release from the jail, appellant did not surrender the property in question to the respondent/complainant in terms of his undertaking/statement through his counsel. Therefore, on 17.08.2017 directions were issued to the trial Court for vacation of the case property and handing over of its possession to the complainant/respondent with compliance report. Consequently, the possession of property in question was handed over to the respondent/complainant.

2. Today, a joint application for compromise between appellant and complainant/respondent has been filed by the respective counsels for the parties duly supported with affidavits of appellant as well as complainant/respondent. Same is taken on record. The counsel for respondent/complainant has also made a statement duly signed by respondent/complainant to the effect that possession of disputed property has been handed over to him and, therefore, he has no objection for acquittal of the appellant; even if the appellant may be acquitted of all the charges including fine amount. Said statement is also taken on record. However, question of maintainability of compromise application was raised by means of order dated 14.05.2018.

3. I have heard learned counsel for parties and have gone through the material available on record.

4. Learned counsel for the appellant submits that though the specific provision for compounding offence is not embodied under the Illegal Dispossession Act, 2005; however, this being Criminal Complaint is governed by the Scheme of Criminal Procedure Code of 1898, therefore, Section 345 Cr.P.C is applicable and presumption would be that the offence related to the property which being of civil nature is compoundable; that the offences in terms of Illegal

Dispossession Act are compoundable. In support of his contention, learned counsel for the appellant has referred the case reported as *IJAZ & another vs. MST. MANADIA (P.L.D 2016 Peshawar 26)* and Suo-Motu case *Re-the STATE versus IRFANULLAH QAZI (2007 M.L.D 1269)*. He further submits that although the respondent/complainant is an aggrieved person but the dispute over property has been resolved as the possession of the same has been handed over to him, therefore, he (respondent/complainant) does not wish to linger on the proceedings, hence, appeal may be disposed of by acquitting the appellant.

5. On the other hand, Mr. Muhammad Daud Narejo, advocate representing respondent/complainant states that after conviction of the appellant, the parties have entered into compromise as a result whereof, the joint statement was made on behalf of appellant and complainant before this Court. Resultantly, his sentence was suspended and the appellant was enlarged on bail. In order to maintain law and order situation in the area and to live peacefully by maintaining the peace and tranquility, they have filed a joint application duly supported by their respective affidavits, hence, no loss or injury would be caused to either side if they may be allowed to act upon the compromise effected between them (parties). Learned counsel for respondent/ complainant has also referred cases reported as *ABDUL WALI (WALI KHAN) and 3 others versus ABDUL RASHID ARIF and 2 others (2013 P.Cr.L.J 767)* and *ABDUL WAHAB and 3 others versus ADDITIONAL SESSIONS JUDGE, OKARA and 3 others (P.L.D 2012 Lahore 305)*.

6. I have given due consideration to the arguments advanced by the learned counsel for the parties and have gone through the material as well as case-laws relied upon by them at the bar.

7. No doubt the legislature has not provided specific section/provision under the Illegal Dispossession Act, 2005 for compounding the offence even it is lacking whether it will be treated as compoundable or non-compoundable offence. However, Section 9 of the Act *ibid* provides that unless provided in the Illegal Dispossession Act, 2005, the provisions contained under the scheme of Criminal Procedure Code, 1898 shall be applicable to all the proceedings under the Act *ibid*. Therefore, I am of the clear view that compromise effected between the parties under the Act *ibid* should be treated as the compromise within meaning of Section 345 Cr.P.C. It is an admitted fact that both the parties have amicably settled down all their differences and have resolved to lead rest of their lives in peace and tranquility. It is settled law that non-compoundability of the particular Section of the law should not be read in isolation but it should be read in background of each criminal case and beneficial interpretation should be given to it; more particularly, when the parties have earnestly decided to live in peace and tranquility by forgetting and giving up all their past transactions then for the sake of their welfare in general and betterment of socio-economic conditions of the society as a whole in particular, it will be prime need of time to acquit the appellant from the charge of instant case upon the basis of compromise despite the non compoundability of the Section 3 of Illegal Dispossession Act, 2005.

8. In the cases of IJAZ & ANOTHER (Supra) and the State versus IRFANULLAH QAZI (Supra), the offences related to Special Law/ATA etc, were not compoundable; however, due to the compromise effected between the parties, same was recognized by the Peshawar High Court as well as bench of this Court. In the case of ABDUL WALI and ABDUL WAHAB (Supra) the compromise was effected

between the parties during pendency of the cases before trial Court in terms of Section 3/4 of Illegal Dispossession Act, 2005 and subsequently were accepted; however, after acquittal of the accused therein, some of the parties had challenged the validity of compromise effected between them before trial Court and wanted to reopen the case on certain issues but Honourable Benches of Lahore as well Peshawar High Court have not disturbed the findings of the Courts below on account of compromise and thus have recognized the compromise taken place between the parties before trial Court.

9. The appellant was convicted under Section 3 subsection (2) of Illegal Dispossession Act, 2005. The legal question is that said offence is not compoundable nor the legislature has defined it in its preamble whether it should be treated as compoundable or non-compoundable. I am of the firm view that if the parties, particularly the aggrieved person/victim and both the parties i.e the complainant and appellant/convict have compromised against themselves then it should be treated as compromised; though under the statute it has not been defined whether it is compoundable or non-compoundable. In the present case, keeping in view the compromise which has taken place between the parties outside the Court, it is not proper to hold the conviction, especially when the complainant does not want to pursue his case anymore and has raised his no objection for acquittal of the appellant.

10. In the circumstances and in view of compromise effected between the parties, instant appeal is disposed of. The appellant present on bail is hereby acquitted of all the charges. His bail bonds are cancelled and surety furnished by him is also hereby discharged.

JUDGE