

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Acq. Appeal No.S-240 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGE

25.10.2021

Mr. Mian Taj Muhammad Keerio, advocate for the appellant

ADNAN-UL-KARIM MEMON, J.- Through the captioned Acquittal Appeal, appellant/complainant has called in question the order dated 13.08.2021, passed by learned 1st Additional Sessions Judge Tando Allahyar in Complaint No. 03 of 2020 (*Re: Huzoor Bux versus Mukhtiarkar and others*), whereby, private respondents were acquitted under section 265-K Cr.P.C.

2. Mr. Mian Taj Muhammad Keerio, learned counsel representing the appellant submits that the impugned order dated 13.08.2021, passed by learned 1st Additional Sessions Judge Tando Allahyar in Complaint No.03 of 2020 is not sustainable under the law as there was sufficient evidence available on record against the private respondents but the trial Court brushed aside the same, more particularly, the private respondents were acquitted of the charge under section 265-K Cr.P.C. without assigning any valid reason; that the prosecution witnesses have not been examined as well as original documents could not be examined however, 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 private respondents; that the law applicable to all persons who enter into or upon immovable property and dispossess, grab, control or occupy it without having lawful authority to do so; that the appellant has proved his tenancy and illegal dispossession from the subject land at the hands of private respondents. Learned counsel further argued that the appellant is legally occupier of the land in question. The Maqata agreement was executed between the appellant/complainant and private respondent No.1. The private respondents had illegally occupied the land in question without any

lawful authority; that the right of the appellant is involved in the matter and his valuable property has been illegally occupied by the private respondents. He next contended that the applications under Section 265-K Cr. P.C filed on behalf of accused Nos. 1 to 5 & 10 are not maintainable under the law. The charge against the applicants/ accused has been established through documentary evidence. Yet no witness has been examined by the learned trial court. The appellant / complainant is the lawful tenant of the property in question. He prayed to allow the application under Section 7 of Illegal Dispossession Act, 2005 and to dismiss the applications under Section 265-K Cr. P.C filed on behalf of accused Nos.1 to 3, 4, 5 & 10. Alternatively he frankly submitted that the act of private respondents, amounts to the offense under section 3(2) of the Illegal Dispossession Act, therefore, the case may be remanded back to the trial Court for recording evidence of prosecution witnesses and then deciding the matter on merits.

3. Arguments heard on the maintainability of the captioned appeal and record perused.

4. The question that arises in this matter is that whether the private respondents have illegally and forcibly dispossessed the appellant from the subject land or otherwise?

5. Primarily, the Illegal Dispossession Act, 2005, protects the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by the land grabbers. It will be expedient to reproduce the provision of Section 3 of the Act for ready reference;-

“3. Prevention of illegal possession of property, etc.--- (1) *No one shall enter into or upon any property dispossessing/grab/control or occupy it without having any lawful authority to do so with the intention to dispossess/grab/control or occupy the property from owner or occupier of such property.*

(2) *Whoever contravenes of the provisions of the subsection (1) shall, without prejudice to any punishment to which he may be liable under any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of offence shall be compensated in accordance with the provision of Section 544 of the Code.*

6. It is evident from the bare reading of Section 3 of the Act which describes the offense exclusively but does not describe the offenders in specific terms. On the contrary, it uses general terms such as 'no one' and 'whoever' for the offenders. The use of such general terms indicates that the widest possible meaning has been attributed to the offenders. Thus, Section 3 demonstrates that whosoever commits an act of illegal dispossession, as described in the Act (supra) against a lawful owner or a lawful occupier, can be prosecuted under its provision without any restriction.

7. Primarily, Section 3 of the Illegal Dispossession Act, 2005 can only be attracted when any person dispossesses, grab, control, or occupy the property without having any lawful authority to do so to dispossess, grab, control, or occupy the property from the owner of the property. In this case, per record appellant is neither the lawful owner nor lawful occupier of the subject premises. Therefore, Section 3 of the said Act is not attractive. Besides, Applicant has failed to point out that he was put in possession of the subject premises by the private respondents and was subsequently dispossessed. Five Member Bench of Hon'ble Supreme Court has already settled the above proposition of law in the case of Mst. Gulshan Bibi and others Vs. Muhamamd Sadiq and others (PLD 2016 SC 769).

8. In the instant case, the appellant admits that he is not the real owner of agricultural land in question, but occupied the land-based on Maqata. Prima-facie this is no justification to prosecute the lawful owner of the property; besides that, his case does not fall within the ambit of the term "Legal occupier" as defined under section 2(c) of Illegal Dispossession Act 2005.

9. I have noticed that the concerned SHO PS Sanjar Chang had moved an application under Section 145 Cr.P.C before the Court of learned Civil Judge & Judicial Magistrate-I, Tando Allahyar bearing No. 05/2020 wherein the learned Magistrate after hearing, has dismissed the said application vide order dated 08/04/2020. Even the FIR No.12 of 2020 lodged by the appellant at PS Sanjar Chang Tando Allahyar under Section 506(2), 147, 148, 149, 382, 337-H (ii), 504 PPC was disposed of as canceled "C" Class by Investigating Officer and his report under Section 173 Cr.P.C. was concurred by the learned Civil Judge & Judicial Magistrate-I Chambar.

10. The finding of learned trial court explicitly show the following factual position of the case as under:

"Considering the above facts and circumstances, I hold that the charge against the applicants/accused is groundless and there is no probability of applicants/accused being convicted of the offence with which they have been charged. I, therefore, dismiss the application under Section 7 of Illegal Dispossession Act, 2005, allow the application under Section 265-K Cr. P.C and acquit the applicants/accused Pir Siddique Sajjad Ghous Shah, Asad Shah, Hassan Shah, Raza Ali, Inayat Ali, and Yar Muhammad including the proclaimed offenders namely Dost Ali, Mashooque Ali, Ashique Ali, and Juman in their absentia under Section 265-K Cr. P.C from the charge. The applicants/accused are present on bail, their bail bonds stand canceled and surety absolved from their liabilities. For acquittal of proclaimed offenders, the SHO concerned be informed accordingly."

11. Basically, the scope of interference in an appeal against acquittal is narrow and limited for the reason that in 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 presumption of innocence is doubled. As per dicta laid down by the Honorable Supreme Court, it has been categorically held that such judgment should not be interfered unless the findings are pervasive, arbitrary, foolish, artificial, speculative, and ridiculous, which is not the case in hand.

12. In the instant case, I do not find any illegality or irregularity committed by the learned trial Court, while passing the impugned order, which does not call for any interference by this Court.

13. In view of the facts and reasons discussed above, I find no merit in the present case and resulting in miscarriage of justice while recording acquittal of the respondents/ accused under Section 265-K Cr.P.C. by the learned trial court. Resultantly, the instant appeal merits no consideration, and accordingly the same is dismissed in limine along with pending applications.

JUDGE

Sajjad Ali Jessar