

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Acquittal Appeal No. 555 of 2018

Date	Order with signature of Judge
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1. For hearing of M.A.No. 9316/2018
2. For orders on office objection at A
3. For orders on M.A.No. 9317/2018
4. For hearing of main case

18th February 2022

Mr. Talib Ali Memon, Asst. Prosecutor General Sindh
Mr. Muhammad Akbar advocate along with respondent No.1

Today none appeared for the appellant. No intimation is received. Since last three dates of hearing, no one is appearing on behalf of appellant, as such it appears that the appellant has lost interest in the instant Acquittal Appeal, however, since appeal was admitted to regular hearing, therefore, in order to do complete justice, I have minutely gone through the material placed on record.

2. Record reflects that complainant filed a complaint against respondent No.1 under Section 3/4 of Illegal Dispossession Act, 2005, after regular trial, the learned trial Court convicted the respondent No.1 under Section 3(2) of Illegal Dispossession Act, 2005 to suffer R.I for 10 months and to pay fine of Rs.25,000/- and to pay Rs.25,000/- as compensation to the complainant, which judgment was assailed before this Court and this Court vide judgment dated 14.03.2018 remanded back the matter to the trial Court with direction record statement of accused u/s 342 Cr.P.C afresh in accordance with law. On remand learned trial Court recorded statement of accused u/s 342 Cr.P.C afresh and after hearing learned counsel for the parties, acquitted the respondent No.1 vide impugned judgment 28.08.2018, which is impugned through instant Acquittal appeal.

3. It is well settled law that trustworthy, convincing and coherent evidence is necessary for awarding conviction to an accused. Needless to emphasize that to convict a person, evidence should be of high quality and good standard which is not available in this case. In the instant case, the complaint has been filed by the appellant on the basis of General Power of Attorney executed by her husband in her favour, however, it is

well settled that Attorney cannot file FIR or criminal complaint. I have also gone through the evidence produced at trial and found the same inconsistent and contradictory. The appellant has also failed to establish that she was dispossessed by the respondent No.1 on the alleged date as mentioned in her complaint. The judgment rendered by the trial Court is by all means a fair judgment based on proper, just and legal appreciation of the evidence on record. Appellant has failed to show that the impugned judgment of acquittal is fanciful or based on no evidence. Even otherwise, when an accused person is acquitted from the charge by a Court of competent jurisdiction then, double presumption of innocence is attached to its order, with which this Court and the apex Court normally does not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record which is not present in the case. In the acquittal appeal, interference is made only when it appears that there has been gross misreading of the evidence which amounts to miscarriage of justice. The ordinary scope of appeal against acquittal is considerably narrow and limited as held in **Muhammad Usman and 2 others v. The State (1992 SCMR 498)** and **The State v. Muhammad Sharif and others (1995 SCMR 635)**. The acquittal of respondent No.1 does not suffer from any illegality so as to call for interference with the impugned judgment. According to golden principle of benefit of doubt, one substantial doubt is enough to acquit the accused. The evidence in this case is highly discrepant and full of infirmities and as such has created a genuine doubt in my mind regarding involvement of respondent No.1 in the commission of crime. The learned trial Court has advanced valid and cogent reasons for passing finding of acquittal in favour of the respondent No.1, thus, I see no legal justification to disturb the same. Therefore, for the foregoing reasons, the instant Acquittal Appeal is hereby on merits and the impugned judgment of acquittal is maintained.

J U D G E

SAJID.