

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

*Cr. Acquittal Appeal No.S-88 of 2021*

*Appellant/Complainant:*            *Syed Zahid Hussain S/o Syed Ghous Muhammad Shah, through Mr. Niaz Hussain Bhutto, Advocate.*

*The State:*                                *Through Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General.*

*Respondents No.1 & 2:*            *None present*

*Date of Hearing:*                        *24.05.2021*

*Date of Judgment:*                    *24.05.2021*

**J U D G M E N T**

**NAIMATULLAH PHULPOTO, J:-**                        Respondents / accused

Hussain and Talib, both sons of Allah Rakhio, were tried by learned Additional District Judge, Hala in I.D Complaint No.10 of 2019 (Re: Syed Zahid Hussain Shah v. Hussain & another). On the conclusion of the trial, vide judgment dated 18.03.2021, the respondents / accused were acquitted of the charge.

2.                        Brief facts of the prosecution case as mentioned in Para No.2 of impugned judgment are as follows:-

“The complainant purchased a house constructed over an area of about 5557 Sq.Ft. situated in Ward No.11 Deh Manahi, Tapo Saeedabad, Taluka Saeedabad, District Matiari from one Muhammad Hussain Suhebjo through registered sale deed vide registered No.629 dated 30.08.2008 vide M.F Roll No.u-552 DATED 12.09.2008. At

that time, the possession was delivered to the complainant and he was enjoying its possession. However, the subject property remained vacant except looked after by the complainant. About one month back, prior to filing of instant I.D complaint, Kamdar Mian Bux Hajano informed the complainant that he went to look after the subject property and found its main entrance door was opened, on enquiry came to know that above named accused have forcibly broken the locks of the subject property and settled with family. The contents of plaint further revealed that on 15.02.2019 at about 05:00 p.m. the complainant alongwith Kamdar and Shoaib Ahmed was available in the house and on calling into the house the above named accused duly armed with pistols came out from house. On enquiry of complainant about their presence in the house, they extended threats for killing them. Thereafter, the complainant approached to Nek Mards of the locality so also concerned police station for redressal of his grievance but all in vain. Hence, complainant filed I.D complaint against respondents/accused for offence under Section 3(1)(2) of Illegal Dispossession Act, 2005.

3. Learned trial Court framed the charge against the respondents / accused at Ex-2. Respondents / accused pleaded not guilty and claimed to be tried.

4. Prosecution in order to prove its case, examined 05(five) witnesses, namely Syed Zahid Hussain (complainant) at Ex-03, Mian Bux at Ex-04, Shoaib Ahmed at Ex-05, Muhammad Soomar at Ex-06 and Ghulam Hyder at Ex-07, in which PWs produced various documents. Thereafter, the prosecution side was closed.

5. Trial Court recorded statements of the accused under Section 342 Cr.P.C, in which respondents/accused denied the

prosecution allegations and claimed false implication in this case by producing various documents.

6. Learned trial Court after hearing the learned Counsel for the parties and assessment of the evidence by judgment dated 18.03.2021 acquitted the respondents / accused from the charge.

7. Learned Advocate for the appellant / complainant has mainly contended that there was huge evidence against the respondents / accused for connecting them with the commission of the offence but the trial court has failed to appreciate the evidence according to the settled principles of the law. It is further contended that the respondents/accused armed with pistols occupied the house of the appellant/complainant and extended threats of dire consequences to him, as such, case was proved against respondents/accused. Lastly, it is contended that the judgment of the trial Court is based upon speculations and the same is not sustainable under the law, which may be set aside and respondents/accused may be convicted.

8. Mr. Shahid Ahmed Shaikh, learned D.P.G has supported the judgment of the trial Court and argued that the trial Court has rightly appreciated the evidence adduced by the prosecution. He further argued that impugned judgment of the trial Court requires no interference and acquittal appeal is liable to be dismissed.

9. In order to properly appreciate the contentions of the learned Counsel for the parties, we have perused the impugned judgment. Learned trial Court has recorded acquittal in favour of the respondents / accused mainly for the following reasons: -

*“13. Complainant claims to have got title of one house situated in Ward No.11 having area 7410 to the extent of 0-75 paisa through registered sale deed dated 30.08.2008 (Exb-03/A) executed in presence of witnesses Saleem Gul and Mujeeb-ur-Rehman. He further claims to have got possession on same date i.e. 30.08.2008 but it remained vacant and locked till 2019. On 15.02.2019, he came to know that it was in occupation of the accused. There is no evidence as to when accused occupied it. The property was situated in the town in residential area, hence, any act of dispossession could have been noticed easily by the neighbors. At least the co-sharer in possession of 25% of the property was the person having concern with the property but nobody witnessed the act of dispossession. The occupation on the part of accused is admitted fact, hence, evidence of witnesses No.2 and 3 is immaterial. There is no eye witness of actual date of incident which accused alleged to have broken the lock and occupied the house. In said situation, burden heavily lies upon the complainant to prove that he actually acquired possession from the vendor. Neither vendor, nor witnesses of sale deed, nor any other person could be produced to establish such fact. The owner of 25% in possession was star witness, who could have given evidence that if complainant got possession of 75% of the property in question, but he was also not produced. In said situation evidence of complainant has become highly unreliable. The sale deed does not indicate survey number and necessary boundaries of the property which also raised reasonable doubt about the possession of complainant. Property is residential house, but complainant failed to produce any electric, gas or water consumption bill of the house from 2008 till 2019 or any such bill in the name of vendor in possession during period before 2008. When there is no evidence of possession of complainant, the question of dispossession or illegal occupation does not arise, hence, both points are answered as not proved.*

10. After hearing the learned Counsel for the parties, I have scanned the entire evidence. Close scrutiny of the evidence reflects that complainant claims that he is the owner of the house, which is subject matter in this case but the trial Court has held that there was no evidence with regard to the illegal occupation that on which date the respondents dispossessed the appellant/complainant from said house. No title documents of the house were produced before the trial Court. Not a single witness was produced before trial Court to prove illegal occupation of the house. Learned trial Court has held that sale deed does not indicate survey number and necessary boundaries of the house. It is also observed by the learned trial Court that property is the residential house but complainant has failed to produce before trial Court electric, gas and water consumption bills since 2008 to 2019. Not a single document / bill has been produced by the appellant/complainant in order to prove that house is / was in his possession. The findings of the trial Court appear to be reasonable, as such, no case of illegal occupation of the property on part of the respondents/accused is established, which may call interference by this Court. It is settled principle of law that appreciation of evidence in the case of appeal against conviction and appeal against acquittal is entirely different as held in the case of **GHOUS BUX v. SALEEM and 03 others (2017 P.Cr.L.J 836)**.

11. The scope of interference in appeal against acquittal is also narrow and limited because in an acquittal the presumption of the 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 the innocence is doubled. This Court is always slow in interfering with the acquittal

judgment. Counsel for the appellant / complainant has failed to satisfy us that the judgment has been passed by the trial Court in violation of the law or it suffer from error of grave misreading or non-reading of the evidence. Acquittal judgment passed by this Court is neither artificial nor shocking. While relying upon the case of **The STATE v. ABDUL KHALIQUE and others (PLD 2011 Supreme Court 554)**, I hold that this appeal against acquittal is without merit and the judgment of the learned trial Court is based upon sound reasons, which requires no interference. Resultantly, the present appeal against acquittal is dismissed.

JUDGE

Shahid