

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

Cr. Acq. A. No.S- 245 of 2020

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DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection.
2. For orders on M.A- 9542 of 2020.
3. For orders on M.A- 9543 of 2020.
4. For hearing of main case.
5. For orders on M.A- 485 of 2021

11.04.2022

Mr. Ishrat Ali Lohar, Advocate for the appellant.

Mr. Muhammad Ramzan Khushk, Advocate for private respondents.

Ms. Rameshan Oad, A.P.G.

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**SALAHUDDIN PANHWAR, J.** Through this criminal acquittal appeal, appellant has assailed the judgment dated 20.11.2020, passed by the learned Additional Sessions Judge-II, Jamshoro at Kotri in I.D Complaint No.05 of 2011, filed by the appellant under sections 3, 4 & 7 of Illegal Dispossession Act, 2005, whereby after full-fledged trial, the private respondents were acquitted of the charge.

2. Per learned counsel for appellant, the learned trial Judge has passed the impugned judgment and acquitted the private respondents of the charge only on flimsy grounds and without considering/evaluating the evidence brought on record by prosecution; that the prosecution witnesses have fully supported the complainant's version; that the appellant participated in auction proceedings and being successful bidder such auction was confirmed and he was put in possession of the subject land; however, subsequently, he was dispossessed by the private respondents forcibly; hence, the impugned judgment is liable to be set aside and the respondents may be convicted in accordance with law. In support of his contentions learned counsel for the appellant relied upon the cases of **Nabi Bux V The state and 4 others** (2011

PCr.LJ 1300) and **Shaikh Muhammad Naseem V Mst. Farida Gul** (2016 SCMR 1931).

3. On the other hand, learned counsel for the private respondents as well as learned A.P.G appearing for the State has supported the impugned judgment.

4. Heard learned counsel for the respective parties and perused the record. As regard the contention of learned counsel for the appellant that appellant participated in auction proceedings and being successful bidder such auction was confirmed and he was put in possession of the subject land; however, subsequently, he was dispossessed by the private respondents forcibly; hence, the impugned judgment is liable to be set aside and the respondents may be convicted in accordance with law; needless to mention that in criminal administration of justice while hearing acquittal appeal Court has to examine whether the judgment of acquittal is perverse, shocking and contrary to law. While keeping such principle in mind I have examined the impugned judgment as well as other record, which reveals that this is a case which is filled with contradictions and the prosecution witnesses are not supporting each other on ocular/material points. While passing the impugned judgment, the learned trial Court in relevant paragraph of the impugned judgment (page-103 of the Court file), observed that:-

“ P.W Qamar-ul-Islam stated that in CP No.1100/2010 he was the attorney of the complainant filed before the Honourable High Court, he admitted that in the contents of CP No.1100/2010, it is not written that the land of the Complainant which has been purchased by him in auction is located at the distance of about 91 KM while coming from Karachi to Hyderabad, he admitted that it is also not written in that after the journey of 91-K.M, he admitted that in Counter affidavit of Yasir Industries, Haji Habib Muhammad Industries, Tumbi Industries, filed in CP No.1100/2010, it is written that according to the record, the land purchased by the answering respondent is situated/located at 91-KM of Super highway whereas the land claimed by the petitioner to have purchased is situated/located at 93-KM of Super Highway, he admitted that as per entries Nos.41 to 44 shown to him at the moment are in the name of Sehgal Textiles and entry No,42 is in the name of Yasir Industries, entry No.43 is in the name of Tumbi Industries and entry No.44 is in the name of Habib S/o Haji Muhammad are dated 10-

09-1986, he admitted that the date of dispossession them from the land is not written in para No.10 of the petition No.1100/2010, he admitted that the inquiry was also conducted by the Board of Revenue, which fact has been disclosed by him in CP No.1100/2010, he admitted that they have challenged the enquiry report of Board of Revenue before the Honourable High Court, he admitted that nowhere in any prayer clause of CP No,1100/2010, they have disclosed that the accused persons had forcibly occupied their land, he admitted that in order dated 17-05-2010 that the dispute between the parties is over S. No.665 only has been wrongly mentioned by the respondents Nos.08 to 11, he admitted that on all three S.Nos.664, 665 & 666 the Nazir Was appointed to inspect the site for determination of possession, he admitted that in Exh.07/D, his presence has not been shown nor his signature is available on it, he admitted that it is not mentioned in it that maps have been brought, papers have been brought and then demarcation was started, he admitted that it is written on Dasti Soorat-e-Hall, sketch has been drawn, he admitted that in CP No.1100/2010 the presence of Director Settlement has not been shown, he admitted that it is not written in the demarcation report that demarcation was started from 11-00 a m and was finished 5-30 p.m, he admitted that he did not Produce the copy of any complaint before this court to show that the same was made with police station Noori abad dated 11th ' May, 2010, he stated that they constructed room of 12x15 feet while he admitted that word fresh construction for the room is not written in the report, he admitted that order dated 01-06-2010 it is not pointed out that from their side it was brought on the record that the accused persons had brought the banners at the site and also brought a mob of 25/30 persons and dispossessed them from the land on the instigation of present accused and also removed the 20-feeter Container with lifter machine from the site and taken away the articles, he admitted that at the moment, his statement recorded by the by the police recorded u/s 161 Cr.PC is not available with him, he admitted that in this petition Faizoo Palari is not their witness.

P.W Liyar the city surveyor stated that they arrived at the site and the sketch of Deh was also with them at that time while he admitted that he has not produced the same sketch of Deh at present, he admitted that it is not specifically mentioned that the sketch of measurement was prepared at the site by them, he saw Exh.07/C and admitted that it is not mentioned about the directions of survey numbers.

A perusal of evidence as well as record produced by both the parties, it cannot be denied that the Nazir of the Banking Court-II Karachi wrongly pointed out the auction land in favour of the complainant.

It is clear from the evidence of both sides came on record that complainant and accused both claimed the ownership of the land in 'question on the basis of their respective documents. Hence, it is a dispute of civil nature regarding ownership of the above mentioned land in question in which both parties are claiming them as real owner of the property in question for which they may approach to the concerned civil court having jurisdiction for declaration and demarcation of the same. However, it is also evident that the complainant filed instant complaint by twisting and converting the facts of the civil in nature litigation into criminal litigation."

5. Perusal of above, reflects that trial Court has referred different portions of facts brought on record and which are sufficient whereby private respondents were acquitted. With regard to possession, appellant was dispossessed despite of successful bidder in auction proceedings. He was/is competent to approach same Court/trial Court which was competent to decide the fact and ensure the writ is maintained since the possession was delivered as a result of auction proceedings.

6. Furthermore, it is also a well-settled law that after getting acquittal from the trial Court, a double presumption of innocence is earned by the accused. The Court sitting in appeal against acquittal, always remain slow in reversing the judgment of acquittal, unless it is found to be arbitrary, fanciful and capricious on the face of it or is the result of bare misreading or non-reading of any material evidence. In the case of **Muhammad Mansha Kousar v. Muhammad Asghar and others** (2003 SCMR 477), the Honourable Apex Court observed as under:-

“ That the law relating to a reappraisal of evidence in appeals against acquittal is stringent in that the presumption of innocence is doubled and multiplied after a finding of not guilty recorded by a competent court of law. Such findings cannot be reversed, upset and disturbed except when the judgment is found to be perverse, shocking, alarming, artificial and suffering from error of jurisdiction or misreading, non-reading of evidence... Law requires that a judgment of acquittal shall not be disturbed even though second opinion may be reasonably possible”.

7. Similar view was taken by the Honourable Apex Court in the case of **Muhammad Tasaweer v. Zulkarnain and 2 others** (PLD 2009 SC 53), in the following words:-

“ Needless to emphasize that when an accused person is acquitted from the charge by a court of competent jurisdiction then, the double presumption of innocence is attached to its order, with which the superior courts do not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record.”

8. The upshot of the above discussion is that the impugned judgment is based on proper and cogent reasoning as well as appraisal of the evidence

which the prosecution could be able to bring on record and thus, it does not call for any interference by this Court. Even otherwise, it is reiterated that the acquittal recorded by the Court of competent jurisdiction, would not be disturbed until there is any misreading or non-reading of the evidence or improper assessment of the record resulting in miscarriage of justice, which, as elaborated above, has not been noticed here. Consequently, the instant appeal against acquittal is dismissed.

JUDGE

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