

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Rev. Application No. 23 of 2018

Applicant : Salman Ahmed

Respondent : The State
through Mr. Talib Ali Memon, APG

Date of hearing : 8th November, 2022

ORDER

Omar Sial, J: On 03.03.2017, on the complaint of one Riaz Hussain Shah, F.I.R. No. 116 of 2017 was registered under sections 448, 420 and 506 P.P.C. at the Gulshan-e-Iqbal police station. Shah recorded that 8 or 10 years ago he had rented out his apartment to one Mumtaz Ahmed. Mumtaz was asked to vacate the apartment and sometime in the year 2016, Mumtaz told Shah that he was vacating the apartment and that he should come and take the keys from him. When Shah went to the apartment he was met by Mumtaz's son, Salman Ahmed (who is the appellant in these proceedings). Salman showed Shah an agreement entered into between him and Shah's wife. Shah's wife denied that she had ever signed that agreement. According to Shah, Salman agreed to vacate the premises (in proceedings initiated by him being Civil Suit No. 1629 of 2016) but then somersaulted on his position and when asked to vacate was rude to Shah and threatened him.

2. Salman pleaded not guilty to the offence against him and claimed trial. PW-1 Riaz Hussain Shah was the complainant. PW-2 Nazneen Riaz was the wife of the complainant. PW-3 Syed Ali Raza Shah was the son of the first two prosecution witnesses and supported what his parents testified at trial. PW-4 was S.I. Aijaz Ahmed Qureshi who was the investigating officer of the case. In his section 342 Cr.P.C. statement Salman professed innocence.

3. The learned 7th Civil Judge & Judicial Magistrate, Karachi East on 14.11.2017 held Salman to be guilty of an offence under section 448 P.P.C. and sentenced him to a 6 month prison term as well as a fine of Rs. 3,000 or 1 month more in prison. This judgment has been challenged through this revision.

4. A jail roll was called for which shows that Salman was released from prison after completing his sentence on 04.01.2018. None has appeared on his behalf in this revision since 24.09.2020. Notices to Salman Ahmed were returned unserved with the endorsement that he cannot be found. His counsel on record, too did not effect an appearance in spite of notice issued to him. I have heard this revision with the assistance of the learned APG. My observations and findings are as follows.

5. While several sections of the law were invoked initially against Salman Ahmed, he was finally convicted only for an offence punishable under section 448 P.P.C. The offence for which Salman was held guilty is that of house trespass. House trespass is defined in section 442 P.P.C. as follows:

“Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house trespass”.”

Section 441 P.P.C. defines criminal trespass as:

“Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or,

having lawfully entered into or upon such property, unlawfully remains therewith intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

6. It is not the prosecution’s case that Salman had breached the first limb of the definition of criminal trespass. It is the second limb i.e. *having lawfully entered into or upon such property, unlawfully remains therewith intent thereby to intimidate, insult or annoy any such person*. It is an admitted position that the apartment had been leased out to Salman’s father and that his family had lived there as tenants for nearly a decade. The family, including Salman, therefore had entered the property lawfully. The question then arises is whether Salman had unlawfully remained on the property till that unspecified date in the year 2016 when Shah asked him to vacate and he had not. As far as the tenancy agreement between Shah and Mumtaz is concerned, that document never came on record. What did however come on record was a Tenancy Agreement ostensibly between

Salman Ahmed and Shah's wife PW-2 Nazneen Riaz entered into on 02.03.2016. PW-2 Nazneen Riaz denied that she had ever executed this agreement. Indeed, the signatures of PW-2 Nazneen Riaz on the agreement are very different to those that the lady had on other documents. This does not reflect very well on Salman's bonafide. Even if one were to give Salman concession on this account, the record reflects that on 30.11.2016, Salman gave a representation before the learned 7th Civil Judge, Karachi East in Civil Suit No. 1629 of 2016 that he had handed over possession of the apartment to the landlord and thus he withdrew the suit. The record reflects that he had not in actuality vacated the apartment and handed over possession to the landlord. Speaking hypothetically, even if Salman's Ahmed possession was legal when the whole saga began, it became unlawful after having made the aforementioned representation to the learned trial court. Salman's bonafide were even more adversely impacted when in his section 342 Cr.P.C. statement he took the plea that his possession was lawful as the landlord had leased the apartment to his father. This defence was in complete contradiction to his earlier producing a tenancy agreement, prima facie a forged one, claiming that the landlord had leased out the property to him. Even then he could not bring his own father to come and testify in his support.

7. In view of the above, I do not see any reason to interfere with the judgment of the learned trial court, which has in any case taken a lenient view as far as sentencing is concerned. The revision application stands dismissed.

JUDGE