

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABD.

Cr. Acquittal Appeal No.S-29 of 2018

Appellant: Muhammad Ali Bhatti through
Mr. Muhammad Sachal Awan
Advocate.

The State : Through Mr. Imran Ahmed Abbasi
A.P.G.

Respondents : None present.

Date of hearing: 28.08.2023

Date of Judgment: 28.08.2023.

JUDGMENT

Zulfiqar Ali Sangi, J: This Criminal Acquittal Appeal has been filed by the Appellant against the judgment dated 01.02.2018, passed by learned IInd. Additional Sessions Judge, Badin, whereby Respondents No.1 to 8 have been acquitted of the charges leveled against them under Section 3(2) of Illegal Dispossession Act, 2005.

2. Brief facts of the case of complainant are that on 08-4-2017 at about 1230 hours when the complainant was present at his plot i.e. Plot No.35 admeasuring 3900 square feet situated in Ward No.6 Badin adjacent with Bus Stop Badin towards Khoski with the boundaries mentioned in Para No.2 of the complaint, the accused, who were running Bus Stand adjacent to the said plot entered into the premises of complainant's plot with intention to occupy the same forcibly. The complainant tired his best to restrain them from possession of his plot and dispossessing him forcibly but the accused play vehicles and taking Bhata from the transporters, dispossessed the complainant without lawful authority being Gang of Land grabbers.

3. Learned counsel for the Appellant/Complainant, at the very outset submits that the impugned judgment passed by learned trial Court is illegal, unlawful and void; that learned trial Court while passing the impugned judgment has not appreciated the evidence of the Appellant/Complainant and his witnesses with regard to commission of offence committed by the Respondents/accused; that the learned trial Court did not consider the evidence of complainant, which was consistent with

the contents of complaint and was duly supported by the prosecution witnesses wherein each and every respondent/accused was specifically attributed proper role; that impugned judgment is based on presumption and assumption so also on surmises and conjectures; that civil litigations have also been finalized in favour of appellant/complainant and he was put in possession by executing Court through due process; learned trial Court did not apply its judicial mind while passing the impugned judgment; that there is no major contradictions, however the minor discrepancies are not fatal to the case of appellant, even otherwise the minor discrepancies should have been ignored instead of acquitting the accused. In the last, he submits that impugned judgment passed by learned trial Court may be set-aside and respondents may be convicted. On the point of maintainability of this appeal, he submits that the complainant is an aggrieved person, therefore, he is not required to file an application for special leave to appeal. Learned counsel relied upon on the case of Abdul Jalil v. Zulfiqar Ali and others (1998 P.Cr.L.J.697).

4. I have heard learned counsel for the appellant and learned A.P.G. for the State and perused the record available in the file.

5. From perusal of record, it appears that impugned judgment has been passed on a complaint filed under Section 3(2) of Illegal Dispossession Act, 2005; however under Section 417(2) & (3) of Cr.P.C, the aggrieved party has to present application for special leave to appeal before the Court within 60 days and after its grant the High Court may proceed with the acquittal appeal. For the sake of convenience, Section 417(2) & (3) of Cr.P.C is reproduced as under:-

“(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.

(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.”

6. It is well settled principle of interpretation law that *“If the words of the Statute are themselves clear and unambiguous, no more is necessary to expound those words in their natural and ordinary sense, the words themselves in such a case best declare the intentions of legislature”*, as has been held by the Honourable Supreme Court of Pakistan in the case of ***Mumtaz Hussain v. Dr. Nasir Khan and others (2010 SCMR 1254)***.

7. In another case of ***Ghulam Haider and others v. Murad through Legal Representatives and others (PLD 2012 SC 501)***, it is also held by the Honourable Supreme Court of Pakistan that:-

“Where the plain language of a statute admits of no other interpretation then the intention of the legislature conveyed through such language is to be given its full effect.”

8. Suffice it to say that for assailing the impugned judgment, arising out of a complaint, complainant has to file an application seeking special leave to appeal within 60 days of the judgment, which is mandatory requirement as per section 417 (2) & (3) Cr.P.C. but the same has not been followed and an acquittal appeal has been preferred against the impugned judgment passed by learned trial Court in a complaint case filed under Section 3(2) of Illegal Dispossession Act, 2005. Even otherwise if this court allows the appellant at this stage to file an application for special leave to appeal as required by section 417 (2) & (3) the same would be time barred and not maintainable as the impugned judgment of acquittal was passed on 16.03.2021 and application is to be filed within 60 days of the acquittal judgment.

9. In view of the above, the acquittal appeal filed by the appellant without seeking special leave to appeal is not maintainable and cannot be entertained. Resultantly, instant Cr. Acquittal Appeal is dismissed being not maintainable.

JUDGE