

Judgment sheet

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No.S-180 of 2016

Date of hearings : 07.08.2023 & 21.08.2023
Date of decision : 02.10.2023.
Appellants : Roshan, Ahsan, Manthar and Ghulam Qadir through M/s. Muhammad Sachal Awan and Waqar Ahmed Memon advocates.
Complainant : Sarfraz Ahmed through Mr. Badal Gahoti advocate.
Respondent : The State through Ms. Rameshan Oad, A.P.G.

J U D G M E N T

ZULFIQAR ALI SANGI,J:- By this judgment, I intend to dispose of captioned appeal filed by above named appellants against the impugned judgment dated 22.08.2016, passed by learned Additional Sessions Judge, Matiari in Criminal Case No. 18 of 2012 re: (Sarfraz and another vs. Roshan and others) in Complaint No.87 of 2011 under section 3 & 4 of Illegal Dispossession Act, 2005, PS Hala, whereby the appellants were convicted and sentenced to suffer imprisonment for ten years and to pay fine Rs.20,000/-each and in case of default thereof, the defaulting accused shall further suffer S.I for two months. The learned trial Court also directed to the appellants to restore the possession of land in dispute to complainants within one week and on failure, DSP Hala shall assist the complainants for restoration of possession of property immediately as incharge PS was failed to execute the interim order regarding restoration of land in dispute.

2. Brief facts of the complaint are that the complainant has alleged that on 15.09.2011 the above named accused alongwith demised accused Muhammad Soomar forcibly occupied the MUHAG of land of complainant bearing S. Nos. 568, 569-2, 396/5, 394/4, 529 in Deh Shekhani, Tapo Bhit Shah, thereby they unlawfully and illegally dispossessed the complainant from his land.

3. The complainant filed complaint before the Court of Sessions Judge Hyderabad which was transferred to the Court of IVth

Additional Sessions Judge, Hyderabad who called reports from SHO PS Halla and Mukhtiarkar concerned and thereafter took cognizance of offence vide order dated 30.01.2012.

4. Copies of the case papers were supplied to accused and the charge was framed against them, to which they pleaded not guilty and claimed trial. After creation of Judicial District Matiari, the case was transferred to the Court of Sessions Judge Matiari. Subsequently it was transferred to the Court of Additional Sessions Judge, Matiari on 22.06.2013. During the course of trial, accused Muhammad Soomar has passed away hence proceedings against him were abated vide order dated 02.03.2013.

5. To prove its case, the complainant Sarfaraz Ahmed examined himself as PW-1 and produced his complaint, copies of Form-VII, copy of letter of Executive Engineer addressed to Assistant Engineer Hala Sub-division, copy of application addressed to Executive Engineer Hala, copy of report submitted to Assistant Executive Engineer Hala, copy of sketches, copy of application addressed to DPO Matiari, copy of application addressed to SPO Hala, copy of application addressed to DCO Matiari, copy of application addressed to Secretary Irrigation and Power Department, copy of letter submitted by AEE to EXN, copy of statement, copy of list containing names of flood affectees, certified true copy of petition filed by accused against him alongwith order dated 12.12.2012, certified true copy of revision application filed by accused against the order passed by Court on application u/s 7 of I.D. Act and certified true copy of order dated 28.08.2013. PW-2 Sufi Saleem Pervez, who produced copies of Rubkari, record of Irrigation Department and receipt of payment respectively. PW-3 Iqbal Ahmed, PW-4 Abdul Ghani @ Adloo, PW-5 Gul Muhammad, PW-6 Tapedar Muhammad Ayoub, who produced authority letter, sketch of land in dispute and report dated 03.12.2011 alongwith three copies of entries of Deh Form-VII, Form VII-B. Thereafter learned counsel for complainant closed his side.

6. The accused were also examined u/s 342 Cr. P.C, in which they denied the allegations against them leveled in evidence and they alleged about PWs to be interested, and further claimed their innocence. The accused refused to be examined on oath and to lead evidence in their defence.

7. After hearing the learned counsel for the parties and assessing the evidence, the trial Court passed the judgment as stated supra. During pendency of this appeal, appellant Manthar also expired and such report is available on the record.

8. I have heard learned counsel for the parties and have gone through the material available on record with their able assistance.

9. Learned counsel for the appellants submits that the appellants are innocent and have been falsely implicated by the complainant; that the complainants are not the owners of the disputed land nor they were in lawful possession of the property; that none official in his evidence has stated that the property belongs to irrigation department; that the irrigation department and National Highway department are claiming the disputed land to be their land; that the complainant party is failed to produce any evidence in respect of the lease; that the appellants are not in possession of the land belongs to complainant party; that trial Court has not considered this aspect of the case that the land in dispute was not leased out to complainant party being ban on lease. Lastly they submit that the complainant party has failed to prove the case against the appellants and they may be acquitted from the charge.

10. Learned counsel for the complainant submits that the disputed land was in the muhag of land of the complainant party, therefore, only the complainant party is entitled for its possession; that the complainant party was in possession of the disputed land on the basis of lease, however, after expiry of earlier lease, the complainant party moved application for the lease again; that sufficient evidence was brought on record by the complainant party to establish the case against the accused persons and their evidence was rightly appreciated by the trial Court while convicting them. Lastly he submits that the appeal filed by them may be dismissed.

11. On reassessment of the entire evidence produced by the prosecution, it established that the land in dispute belongs to government where two government departments are claiming to be their land viz. Irrigation department, Government of Sindh and National Highway Authority under the control of (Federation), Government of Pakistan. However, its possession is claimed by the

complainant party that it was in their possession and the accused persons being affectee of the heavy rain had occupied the same land in the year 2011. I have scanned the evidence and the documents produced by the PW-1 Sarfraz Ahmed, he during cross examination stated that he does not know whether land in dispute is government land or otherwise, however, he voluntarily stated that it was muhaga land which was given to them. He further stated during cross examination that he does not know about any application submitted by him or his brother to concerned department to lease out the said land to him which was refused. He, however, denied as to whether Irrigation Department lodged FIR No.58 of 2012 on 03.05.2012 at Police Station, Bhit Shah against Roshan (appellant No.1) that he has occupied the land of Irrigation department and the case was pending before the Civil Judge, Hala. This witness also stated during the cross examination that he does not know about any notice issued by National Highway department on 20.01.2012 against the accused Roshan to vacate the said land. The important thing in the case is that even the complainant does not know as to whether land in dispute was leased out to them or not but he states that they are cultivating the said land since forefathers. Such aspect of the case clearly indicates that the complainant party was not the owner of disputed land and the possession thereof was also not lawful. The complainant PW-2 Sofi Saleem Pervez who also claiming to be owner of the said land has admitted in his cross examination that the land which was in possession of the accused persons was pai land. He admitted in respect of the documents produced by him and that such are not lease documents. This witness further admitted that the SDO Hala had submitted report to Executive Engineer Hala stating therein that he (PW-2) has submitted application requesting therein to lease the land to him (PW-2). During the cross examination this witness further admitted that he has not produced any title documents, record of rights or registered deed of land in dispute in Court to show his ownership on the disputed land. These both the witnesses claiming to be owners are failed to produce any documents which states that the land in dispute was leased out to them by any of the above discussed departments or they were allowed to occupy the same.

12. The important witness was PW-06 Muhammad Ayoob (Tapedar) who was authorized by the Mukhtiarkar for recording

evidence in his examination-in-chief has deposed that “The land in dispute is government property. It is situated adjacent to one bank of shakh i.e. Tara minor. The land of complainant is situated at opposed bank of said Shakh.” He further deposed in examination-in-chief that “The accused have no right over the land in dispute as it is belonging to government. Voluntarily says that only Roshan is residing at the land in dispute while other accused are residing in Hala Town.” This witness was cross examined and during cross examination the report of Mukhtiarkar was confronted to him after that he stated that it is mentioned in the report that Mukhtiarkar and the Tapedar again visited the site personally and found that respondents had occupied the government land unlawfully by making katcha/pacca houses and they had no any title document and the land in dispute was located in between the land pertains to Irrigation Department and National Highway Authority. He also admitted that the complainant has no title of said land in dispute and further admitted that complainant has no lease of the land in dispute. After the evidence of both the PWs No.1 and 2 claiming to be the owners of the disputed land and the PW No.06 the Revenue Official, there is no need to discuss the evidence of other PWs as after their evidence it is crystal clear that complainant party was not the owner of property in dispute nor were lawful occupier of the said land. It is observed that the intention of legislature in promulgating the “Illegal Dispossession Act, 2005” was to protect the lawful owners and the lawful occupiers of the immovable property which is also clear from the preamble of said Act which reads “WHEREAS it is expedient to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by the property grabbers; It is hereby enacted”. Whereas, section 2 (c) of the said Act defines as "occupier" means the person who is in lawful possession of a property; and the owner is defined at (d) as "owner" means the person who actually owns the property at the time of his dispossession, otherwise than through a process of law. The complainant party does not come any of the definition discussed above.

13. The over-all discussion arrived at conclusion that the prosecution has miserably failed to prove the guilt against present appellants beyond shadow of any reasonable doubt and it is a well-settled principle of law that for creating the shadow of a doubt, there should not be many circumstances. If a single circumstance creates

reasonable doubt in the prudent mind, then its benefit is always extended in favour of the accused not as a matter of grace or concession, but as a matter of right. In this respect reliance is placed on the case of ***Muhammad Mansha v. The State (2018 SCMR-772)***, wherein the Supreme Court of Pakistan has held that:-

“4. *Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)*”.

14. Resulting upon above discussion, I am of the judicious view that the learned trial Court has not evaluated the evidence in its true perspectives and thus arrived at an erroneous conclusion by holding present appellants as guilty of the offence. Thus, the instant criminal appeal is allowed; the conviction and sentence recorded against the appellants by way of impugned judgment could not be sustained, the same are set aside and the appellants are acquitted of the charge. The appellants are present on bail, their bail bonds are cancelled and surety is discharged. Additional Registrar of this court is directed to return the surety papers to their surety after proper verification and identification.

15. The above criminal appeal is disposed of in the above terms.

J U D G E