

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No. S-68 of 2024 (new)
Criminal Appeal No. S-145 of 2022 (old)

Appellant: Muhammad Saleem s/o Muhammad Azam
Present in person (on bail). His counsel Mr. Shoukat
Ali Kaka advocate is called absent.

State: Through Mr. Shahzad Saleem,
Additional Prosecutor General, Sindh

Complainant: Merajuddin s/o Salahuddin Shaikh
(called absent)

Date of hearing: 27.06.2024

Date of Judgment: 27.06.2024

JUDGMENT

MUHAMMAD SALEEM JESSAR. J- By means of instant Criminal Appeal, the appellant has assailed the Judgment dated 15-10-2022 passed by learned Sessions Judge, Sanghar, vide Sessions Case No.109/ 2022, being outcome of complaint under 3(2) and 8 of Illegal Dispossession Act, 2005, whereby the trial court, after full dressed trial, finding the appellant to be guilty of the offence under section 3(2) of the Illegal Dispossession Act, 2005, convicted him for said offence and sentenced him to undergo R.I for three(03) years and to pay fine of Rs.10,000/= (Rupees Ten Thousand Only), In case of non-payment of fine, the appellant was ordered to suffer S.I for three months more. It was further ordered that appellant shall hand over possession of the area in dispute to the complainant; in case of non-delivery of possession as ordered above, same shall be handed over through Mukhtiarkar concerned with the help of police.

2. The brief facts of the complaint filed by complainant Merajuddin u/s 3(2) and 8 of Illegal Dispossession Act, 2005, before trial court are that his agricultural land admeasuring 4-00 acres bearing Survey No.402 situated in deh / Tappo Sinjhor, Taluka Sinjhor, District Sanghar, is mutated in Revenue record of rights and has been entered under entry No 315/ 252 dated 28-06-1994 in village form VII-B and since then he is in physical and cultivating possession of said land. On 30-11-2021 at 5.00 p.m he alongwith his *Haries* namely Abbas s/o Sharif and Iqbal s/o Bashir Ahmed was present at the land, in the meantime accused duly armed with deadly weapon criminally trespassed his land, used filthy language and by making aerial firing dispossessed him on show of force without any right, title and character. Then he approached to nek-mards so also to police but to no avail, hence he filed instant complaint.

3. The trial court after calling reports from Mukhtiarkar and SHO concerned brought the complaint on record vide order dated 26-02-2022. Formal Charge was framed against the appellant/ accused at Ex.02, to which he pleaded not guilty and claimed trial vide his plea at Ex.03. In order to prove its Charge, complainant examined in all four (04) witnesses at Ex.04 to 07, including himself, who produced and recognized certain documents, then learned counsel for the complainant closed his side vide statement at Ex.08. Statement of accused, as required under Section 342 Cr. P.C was recorded at Ex.09 wherein he denied the allegations leveled by complainant against him. He produced original sale agreement dated 08-12-2017 executed by complainant in his favour and original lease agreement executed by complainant in favour of one Muhammad Akber (Zamindar of accused) at Ex.09-A and Ex.09/B; however, neither he

examined himself on Oath nor produced any witness in his defense. Finally learned trial Court after hearing the arguments of learned counsel for the parties, convicted and sentenced present appellant, as mentioned supra.

4. The appellant present before the court submits that due to compromise and handing over possession of disputed property to complainant, he and complainant had already submitted applications u/s 345 (2) and 345(6) Cr.P.C vide M.A.No.8631/ 2023 and M.A.No.8632/ 2023 dated 29-08-2023. He, therefore submits, in the light of judgment passed by this court in case of Akhter Hussain vs. SHO Sachal Karachi and 2 others (2020 P Cr L J Note 20) and un-reported order dated 02-12-2022 passed in Criminal Appeal No.S-46/ 2016 Re: Khamiso Khan alias Riaz vs. Babar Aftab Siyal and another, his appeal may be allowed and he may be acquitted from the charge by way of compromise.

5. Learned A.P.G, looking to the circumstances of case, has recorded his no objection.

6. Pursuant to notice issued by this court, Mr. Amjad Saeed Dahiri, Mukhtiarkar (Revenue) Taluka Sinjhoru, appeared in person and filed compliance report dated 26-06-2024 alongwith statement of complainant dated 05-11-2022; it reveals that in compliance of directions contained under impugned judgment, possession of disputed property was handed over to complainant in year 2022.

7. The appellant has mainly pressed for his acquittal on the basis of compromise arrived at between him and complainant, therefore, I would like to deal with the maintainability of compromise applications in Illegal Dispossession Act, 2005, in the first instance.

8. No doubt the legislature has not provided any specific section/provision in the Illegal Dispossession Act, 2005 for compounding the offences under the Act; however, section 9 of the Act, 2005 provides that unless otherwise provided in the Illegal Dispossession Act, 2005, the provisions contained under the scheme of Criminal Procedure Code, 1898 shall be applicable to all the proceedings under the Act *ibid*. Therefore, I am of the clear view that the compromise arrived at between the parties under the Act *ibid* should be treated as the compromise within the meaning of section 345, Cr.P.C. Now the question has arisen that the offences under the Act *ibid* do not find mention in the table provided in section 345, Cr.P.C., therefore, compromise in respect of such offences could be entertained or not by this Court.

9. It is an admitted fact that both the parties have amicably settled all their differences and have agreed to pass rest of their lives in peace, tranquility and harmony. It may be observed that non-compoundability of a particular offence under any section of the enactment should not be read in isolation but it should be read in the background of each criminal case and beneficial interpretation should be given to it. If any authority is needed, reference may be made to the case of *Ijaz and another v. Mst. Manadia* (PLD 2016 Pesh. 26). In instant case, when both parties have earnestly decided to live in peace and tranquility by ignoring and settling all their past differences, then for the sake of their welfare in general and betterment of socio-economic conditions of the society as a whole, it will be prime need of the time to accept the compromise and consequently acquit the appellant from the charges.

10. In cases of *Ijaz and another supra*, and *The State v. Irfanullah Qazi* (2007 MLD 1269), the offences relating to Special Law/ATA etc. were not compoundable, however, on account of compromise arrived at between the parties, the same was recognized by the Honourable Peshawar High Court as well as by this Court. Likewise, in the cases of *Abdul Wali (Wali Khan) and 3 others v. Abdul Rashid Arif and 2 others* (2013 P Cr. L J 767) and *Abdul Wahab and 3 others v. Additional Sessions Judge, Okara and 3 others* (PLD 2012 Lah. 305), the compromise was effected between the parties during pendency of the cases before trial Court in terms of sections 3/4 of Illegal Dispossession Act, 2005, which was accepted by the trial Court, however, after acquittal of the accused therein, some of the parties had sought review of the order passed by the trial Court and wanted to reopen the case on certain issues but the Honourable Benches of Lahore as well as Peshawar High Courts declined to disturb the findings of the Courts below on account of compromise and thus have recognized the compromise took place between the parties before trial Court.

11. The appellant was convicted under subsection (2) of section 3 of Illegal Dispossession Act, 2005. The legal question is that when the legislature has not specifically defined in its preamble as to whether the said offence should be treated as compoundable or non-compoundable then the same could be compounded by the parties or not. Although, the Statute viz. The Illegal Dispossession Act, 2005 is silent, whether it is compoundable or non-compoundable, however, the dispute relates to property, thus, the same is presumed to be of civil nature, and in civil rights the room for negotiation ever remains open, therefore, the

legislature in its wisdom has left it open for the courts to decide such issue. It is trite of law that when the statute or enactment is silent or where there are two possible interpretations of a provision of law, the one which is favourable to the accused is to be followed. In instant case, the parties have filed joint applications for compromise, besides the possession of the subject property has also been handed over to the complainant, therefore, in order to maintain peace and tranquility between the parties, propriety of law demands to entertain the compromise application. I am of the considered view that if both the parties i.e. the complainant and the appellant/convict, particularly the aggrieved person/victim, have settled their disputes and differences amicably, then such compromise should be accepted by the Court, though under the Statute it has not been specifically defined/clarified as to whether the same is compoundable or non-compoundable. In present case, keeping in view the compromise, which has taken place between the parties outside the Court, it is not proper to uphold the conviction specially when the complainant himself does not want to pursue his case anymore and has raised no objection to the acquittal of the appellant. In support of this view I am fortified by the following decisions of the Superior Courts.

12. In the case reported as Ijaz and another supra, while dealing with the similar situation, it was held by Peshawar High Court as under:

"5. No doubt section 436, P.P.C. is not compoundable and section 345, Cr.P.C. is inapplicable to compound it but equally it is an admitted fact that both the parties have amicably settled down all their differences and have resolved to lead rest of their lives in peace and tranquility.

8. Of course, in letter, section 436, P.P.C. is not compoundable. However, non-compoundability of a

section of law should not be read in isolation but it should be read in the background of each criminal case and a beneficial interpretation should be given to it. When the parties in the instant case have earnestly decided to live in peace by forgetting all their differences then it will be a need of the hour to acquit the petitioners in the instant case on the basis of compromise despite the non-compoundability of section 436, P.P.C."

13. A Division Bench of this court, while dealing with this point in the case of Hussain Bux and others v. The State reported in PLD 2003 Karachi 127 (DB), has observed as under:

"At this juncture we would like to refer to another objection of Mr. Ali Azhar Tunio, learned Assistant A. G to the effect that the offence under section 302, P.P.C. is compoundable while the offence under section 149, P.P.C. is not compoundable. Although in Second Schedule to Cr.P.C. it is contained that the offence under section 149, P.P.C. is not compoundable but we are persuaded to agree with the views of Mr. Muhammad Bachal Tunio, learned Addl. A. G, and Mr. Ali Nawaz Ghanghro Advocate, the learned amicus curiae, that offence under section 149, P.P.C., is by way of constructive liability and when the main offence is allowed to be compounded and the persons who have taken specific part in the commission of offence are allowed to compound, then the persons who are convicted on account of being merely members of unlawful assembly are also entitled to the concession of compromise/ compounding/waiver, otherwise it would not be in consonance with the principles of justice, in accordance with the injunctions of Islam as laid down in Holy Qur'an and Sunnah."

14. In another case reported as Shahid v. The State and another (2017 YLR Note 81 [Lahore]) it was held as under:

"Needless to say, compromise even in non-compoundable offences makes a crucial circumstance and a redeeming feature which helps the warring-parties come close to each other and live peacefully onwards. Let non-compoundable nature of the offences under sections 452, 354, P.P.C. not frustrate their noble intentions."

15. The Honourable Lahore Court in the case of Ali Raza and another v. The State and another reported in PLD 2013 Lahore 651 made following observations:

"The offence alleged is certainly non-compoundable but eagerness of the parties to settle their dispute by executing an agreement, in mentioned terms has to be given a sense of respect, so that they may harvest benefit thereof. The complainant and his wife, who are doctors/ medical-officers by profession, hence, educated persons; well understand the ins and outs of the compromise arrived at and they, being, present in person like Mst. Kalsoom Bibi accused have expressly stated that they on account of compromise do not intend to prosecute the accused-petitioners further, if the loss allegedly sustained by the complainant and his wife at the hands of the accused/ petitioners has been made good, to their entire satisfaction, there may be no harm in allowing the instant applications for bail after arrest. Even otherwise, it has always been observed that the compromise even in non-compoundable offences is a redeeming factor, which brings peace, harmony and coherence in the society and it may have far-reaching positive effects, in the lives of warring-parties."

16. The upshot of above discussion is that it would be in the best interest of justice and equity that the compromise application arrived at between the parties merits consideration. Therefore, keeping in view the cordial relations between the parties in future, the listed applications under Section 345(2) Cr.P.C being M.A.No.8631/ 2023 is hereby *granted* and application under Section 345(6) Cr.P.C vide M.A.No.8632/2023 is *accepted*. Consequently, instant appeal is hereby *allowed*. Resultantly, impugned judgment to the extent of conviction and sentence of the appellant is hereby set aside to the extent of his sentence of incarceration as well fine only whereas to the extent of direction to appellant regarding handing over possession of disputed property to complainant is hereby *maintained*. Appellant is *acquitted* of the charges by way of compromise; he is present on bail, his bail bond is cancelled and surety furnished by him is hereby discharged. These are the reasons of the short order dated 27-06-2024.

JUDGE

Mirpurkhas.

Dated: 28th June, 2024.

APPROVED FOR REPORTING.

Saleem