

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Acquittal Appeal No.366 of 2021

Date

Order with signature of Judge

For hearing of main case

23.08.2024

Mr. Muhammad Mohsen Khan, Advocate for the appellant.

Mr. Salahuddin Khan Gandapur, Advocate for the respondent No.2.

Mr. Khadim Hussain Khuharo, Additional Prosecutor General Sindh along with SI Muhammad Nasir of P.S. Saddar, Karachi.

ZAFAR AHMED RAJPUT, J: This Criminal Acquittal Appeal, under Section 8-A of the Illegal Dispossession Act, 2005 (“**Act of 2005**”) read with Section 417, Cr. P.C is directed against the judgment, dated 27.05.2021, passed in I.D. /Cr. Complaint No.624 of 2017 (“**I.D. Complaint**”), whereby the learned IInd, Additional Sessions Judge, Karachi-South, acquitted the respondents No.1 to 3/accused of the charge.

2. Learned counsel for the appellant contends that the impugned judgment, being against the law and facts of the case is not sustainable; that it is an admitted position that the respondents/accused are in possession of the subject property, but they failed to prove their title through any authentic document; that the Act of 2005 is a special law promulgated to protect the rights of the lawful owner or occupier and not to perpetuate the possession of illegal occupants. In this regard, learned counsel has relied upon the cases of *Rahim Tahir Vs. Ahmed Jan and 2 others (PLD 2007 SC 423)*, *Malik Muhammad Naeem Awan vs. Malik Aleem Majeed and 5 others (PLJ 2008 Lahore 644)* and *Wali Muhammad vs. Additional Sessions Judge, Jaranwala District Faisalabad and 5 others (PLJ 2008 Lahore 872)*. He further contents that, although the suit filed by the predecessor of the appellant is pending adjudication before this

Court, the appellant is at liberty to avail simultaneously the remedy of filing of a direct complaint under the Act of 2005 for the criminal wrongs committed by the respondents/accused. In this regard, learned counsel has relied on various case laws including the case of *Maqsood Ahmed Qureshi vs. Muhammad Azam Ali Siddiqui and 8 others (PLD 2009 Karachi 65)*.

3. On the other hand, learned counsel appearing for the respondent No.2 fully supports the impugned judgment.

4. Heard and perused the record.

5. It appears that the appellant filed the I.D. Complaint alleging therein that, on 26.03.2012, the respondents No.1 to 3 illegally and unlawfully occupied his flat, bearing No.A-601, situated in Sea Breeze Plaza, Shahrah-e-Faisal, Karachi. However, it is an admitted position that prior to the said I.D. Complaint, the mother of the appellant, namely, Mst. Shamim Ali w/o Syed Khursheed Ali, on 17.04.2012, had filed such Complaint being No.495/2012, under Sections 3, 4 & 5 of the Act of 2005, before the Sessions Judge, Karachi South. She subsequently passed away on 18.12.2015; since her legal heirs did not pursue the same, said complaint was dismissed for non-prosecution on 05.08.2016. Thereafter, the appellant filed the present I.D. Complaint on 29.04.2017. It is also an admitted position that, on 25.11.2014, the mother of the appellant filed a suit for declaration, cancellation of documents, damages and permanent injunction, being Civil Suit No.2351/2014, before this Court, so also the respondent No.2 (*Mst. Shahida Arshad*) filed a Civil Suit, bearing No.1669/2012, against the mother of the appellant and others, which as per counsel are still pending adjudication since 2012. Both the said civil suits regarding ownership of the subject flat were filed by the respondent No.2 and the deceased mother of the appellant in her life-time much prior to the filing of the present I.D. Complaint by the appellant.

6. It may be relevant to mention here that the respondents No.1 & 2 are mother and daughter *inter se*, and as per the report submitted by the S.H.O. P.S. Saddar, Karachi, the respondent No.1 (*Farzana Anwer*) had already died on 05.08.2012; but even then she was made accused by the appellant in the I.D. Complaint filed on 29.04.2017.

7. The respondent No.2 claims her right in respect of subject flat on the basis of a gift deed, allegedly executed in her favour by her mother, which is under determination in an already filed civil suit; therefore, it cannot be said that she is in occupation with some *mens rea*, coupled with *actus reus*, which is a necessary ingredient for a criminal action against her. In this regard, it has been observed in the case of *Waqar Ali & others vs. the State (PLD 2011 SC 181)*, as under:

“It is clear from section 3 ibid that in order to constitute an offense thereunder the complaint must disclose the existence of both, an unlawful act (actus reas) and criminal intent (mens rea). In view of the allegations and circumstances considered above, it is apparent that even if it is ultimately established that the appellants are in occupation of an area owned by the respondent-complainant, there is no indication that they also had the necessary criminal intent. On the contrary, the averments in the complaint point in the opposite direction and show at best, that there is a dispute of a purely civil nature between the parties as to the exact location of their respective parcels of land. It is in these circumstances, and with the aforesaid background in mind that learned counsel for the respondent-complainant was asked to state if an inadvertent encroachment would constitute an offence under section 3 of the Act. He replied in the affirmative. We are afraid his response is against the express wording of the statute which requires the existence of a guilty intention for the purpose of assuming jurisdiction. For reasons considered above, guilty intent, does not exist in the present case.”

8. There is no cavil to the proposition that civil as well as criminal remedies can be availed simultaneously for civil and criminal wrongs by the aggrieved person. However, as observed in the case of *Rana Nasir Ali vs. Gul Agha & others (2020 YLR 2331)*, it is not an inflexible rule and it happens that a cause involves between the parties had overtones of a civil dispute with certain

criminal facets, and it will not be proper to give a criminal twist to such a dispute which is mainly of a civil nature to bring the same within the scope of some penal section. The complaint under the Act of 2005 is not meant either to equate a civil proceedings or to frustrate a civil suit.

9. For the foregoing facts and reasons, I am of the view that the impugned judgment does not suffer from any illegality or irregularity requiring any interference by this Court under its appellate jurisdiction. The case-law referred to by the learned counsel for the appellants being on distinguishable facts, do not advance the case of appellant; hence, the instant Criminal Acquittal Appeal being devoid of merit is dismissed, accordingly.

Tahseen

JUDGE