

9/1/19

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa, CJ
Mr. Justice Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Appeals No. 403, 404, 405, 406 & 407 of 2019 and
Criminal Miscellaneous Applications No. 1326, 137-K, 1440,
148-K & 1523 of 2019**

(Against the judgment dated 17.07.2019 passed by the High Court of Sindh at Karachi in Criminal Acquittal Appeal No. 89 of 2015)

Syed Asif Hussain Zaidi, etc. (in Cr. A. 403 of 2019)
Syed Khursheed Hussain (in Cr. A. 404 of 2019)
Syed Nasir Abbas, etc. (in Cr. A. 405 of 2019)
Syed Muhammad Ali Naqvi (in Cr. A. 406 of 2019)
Syed Kausar Abbas Rizvi, etc. (in Cr. A. 407 of 2019)
...Appellants

versus

Syed Muhammad Ahsan, etc. (in Cr. As. 403, 406 & 407/2019)
The State, etc. (in Cr. AS. 404 & 405 of 2019)
...Respondents

For the appellants:

Farooq H. Naek, Sr. ASC
(in Cr. As. 403 & 407 of 2019)
Mr. Sami Ahsan, ASC
(in Cr. A. 404 of 2019)
Syed Haider Imam, ASC
(in Cr. A. 405 of 2019)
Mr. Muhammad Farooq, ASC
(in Cr. A. 406 of 2019)
With all the appellants in person.

For the respondents:

Syed Muhammad Mohsin,
Respondent in person.
(in all cases)
Mr. Muhammad Kasim Mirjat, AOR
(in Cr. A. 406 of 2019)


For the State:

Syed Meeral Shah Bokhari,
Additional Prosecutor-General,
Sindh (in all cases)

Date of hearing:

29.10.2019

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

Ph: 9214461
Fax: 9220406



REGISTERED
No.Crl.As.403-407/2019- SCJ
SUPREME COURT OF PAKISTAN
Islamabad, 5/11/2019

From The Registrar,
Supreme Court of Pakistan.
Islamabad.

To The Registrar,
High Court Of Sindh.
Karachi.

Subject: CRIMINAL APPEAL Nos.403-407 OF 2019

1580
INWARD TO CRT
BRANCH 19
DATE 09/11/19
HIGH COURT OF SINDH KARACHI

Syed Asif Hussain Zaidi and others	(in Crl.A.403/2019)
Syed Khursheed Hussain	(in Crl.A.404/2019)
Syed Nasir Abbas and another	(in Crl.A.405/2019)
Syed Muhammad Ali Naqvi	(in Crl.A.406/2019)
Syed Kausar Abbas Rizvi and another	(in Crl.A.407/2019)
Versus	
Syed Muhammad Ahsan & others	(in Crl.A.403/2019)
The State thr. P.G.Sindh and others	(in Crl.A.404/2019)
The State and others	(in Crl.A.405/2019)
Syed Muhammad Ahsan and others	(in Crl.A.406-407/2019)

On appeal from the Order/Judgment of the High Court Of Sindh, Karachi dated 17/07/2019 in Cr.A.A.89/2015

Dear Sir,

In continuation of this Court's letter of even number dated 16.10.2019, I am directed to enclose herewith a certified copy of the Order/Judgment of this Court dated 29/10/2019 allowing the above cited cases in the terms stated therein for information and further necessary action.

I am further directed to return herewith the original record of the High Court received under the cover of your letter No.Crl.A.89/2015 dated 23/10/2019.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl. Order/Judgment:
2. 3. Record of High Court:

Yours faithfully,


(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

JUDGMENT

Asif Saeed Khan Khosa, CJ.: The appellants in all these appeals were acquitted by the trial court when charged with an offence under section 3 read with sections 4, 5, 7 and 8 of the Illegal Dispossession Act, 2005 but on the basis of an appeal filed by the complainant/respondent No. 1 the judgment of acquittal passed by the trial court was reversed and the appellants were convicted by the High Court for an offence under section 3(2) of the Illegal Dispossession Act, 2005 with various sentences passed against them. Hence, the present appeals by leave of this Court granted on 10.10.2019.

2. The issue involved in the complaint filed under the Illegal Dispossession Act, 2005 was regarding an alleged dispossession of the complainant from a notified charitable institution which was known as *Markaz-e-Huquq-e-Sharia Pakistan* which statedly had been created by the complainant's father as a Trust. Without going into the merits of the allegations leveled against the appellants it has straightaway been noticed by us that the complainant's appeal filed before the High Court against the acquittal of the present appellants had been filed on 26.03.2015 by invoking section 417(2A), Cr.P.C. and that appeal was filed at a time when no right of appeal against acquittal of an accused person under the Illegal Dispossession Act, 2005 had been conferred by the legislature. We note that section 8A was added to the Illegal Dispossession Act, 2005 on 03.07.2017 providing a right of appeal to a person convicted for an offence under section 3 of the said Act and to a person who had been ordered to vacate property so that it might be handed over to the person who had been dispossessed. It goes without saying that introduction of section 8A in the year 2017 amounted to a recognition by the Parliament that prior to introduction of section 8A no right of appeal was available to a convicted person. If prior to 2017 an appeal could be filed against an order passed by the trial court under the Illegal Dispossession Act, 2005 then such appeal against an order of conviction could be

ATTESTED




Court Associate
Supreme Court of Pakistan
Islamabad

nsk.

filed under section 410, Cr.P.C. and an appeal against acquittal could be filed under section 417, Cr.P.C. and if that were so then there was hardly any occasion for the legislature to introduce section 8A of the Illegal Dispossession Act, 2005 in the year 2017. Introduction of section 8A of the Illegal Dispossession Act, 2005 by the legislature itself amounted to an acknowledgement that prior to 03.07.2017 no right of appeal had been conferred against an order of conviction or even against an order of acquittal. On the basis of that premise it may confidently be observed that the only right of appeal available in the Illegal Dispossession Act, 2005 is the remedy provided under section 8A on 03.07.2017 and even that section 8A still does not confer any right of appeal in the matter of acquittal of an accused person by the trial court under the Illegal Dispossession Act, 2005. This shows that the appeal filed by the complainant in the present case on 26.03.2015 by invoking section 417(2A), Cr.P.C. was not competent and such an incompetent appeal had never been converted into any other remedy lawfully available to the High Court. The law is settled by now that an incompetent appeal not converted into or treated as any other remedy lawfully available to the High Court remains an incompetent appeal and the judgment passed in such incompetent appeal is devoid of any legal effect. In this view of the matter the impugned judgment passed by the High Court cannot be sustained on the legal plane.

3. The Preamble to the Illegal Dispossession Act, 2005 as well as section 3(1) of the said Act show that the said Act applies to dispossession of a lawful owner or an occupier of a property whereas in the case in hand the High Court itself had held that the property in issue was owned by a notified charitable institution which had been registered as a Trust and, therefore, it could not be said that it was the complainant who was the owner of the property and he had been dispossessed of the same. Likewise, the record of the case shows that at different times different parties had been in possession of the property in issue and the impugned judgment the High Court had itself mentioned that for nine long

ATTESTED



Court Associate
Supreme Court of Pakistan
Islamabad

years the appellants had also remained in possession of the property in question. In these peculiar circumstances of the case we have found that the case in hand was not a fit case to be dealt with by a court under the Illegal Dispossession Act, 2005 and a criminal court seized of such a complaint was not a proper forum for adjudication of the issues involved. It has, thus, surprised us to notice that while seized of a criminal appeal, and that too an incompetent appeal, the High Court had proceeded not only to decide the matter of possession or dispossession but it had also proceeded to decide matters pertaining to trusteeship of the relevant property besides issuing directions regarding embezzlement of some funds belonging to the Trust.

4. For what has been discussed above we have found the impugned judgment passed by the High Court to be unsustainable on the above mentioned multiple scores. These appeals are, therefore, allowed, the convictions and sentences of the appellants recorded by the High Court are set aside and the appellants are acquitted of the charge. The bail bonds and sureties of those appellants who had been admitted to bail during the pendency of these appeals shall stand discharged. The appellants presently serving their sentences of imprisonment in the present appeals shall be released from the jail forthwith if not required to be detained in connection with any other case.

5. Before parting with this judgment we would like to observe that the record of the case shows that a property which is a notified charitable institution is a bone of contention between different persons and groups and in order to manage the affairs of that property the High Court had issued some directions. Upon acceptance of the present appeals and setting aside of the judgment and directions issued by the High Court a vacuum is likely to be created and the parties may take the law in their own hands for the purposes of taking possession of the relevant property, etc. The said possibility may lead to a law and order situation which may be detrimental to the interests of many

ATTESTED

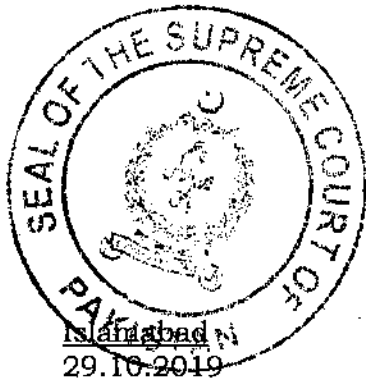

Court Associate
Supreme Court of Pakistan
Islamabad

not

including the orphans living in that property. It is, therefore, directed that the Auqaf Department, Government of Sindh shall immediately take control and possession of the relevant property, restore the position under the Trust and to make sure that the purposes of the Trust are given effect to in accordance with the law.

Criminal Miscellaneous Applications No. 1326, 137-K, 1440, 148-K & 1523 of 2019

6. As the main appeals have been allowed, therefore, these miscellaneous applications have lost their relevance. Disposed of.



Islamabad
29.10.2019
Not approved for reporting.
Arif
[Handwritten signature]
317x119

Sd - CJ
Sd - J
Sd - J

CERTIFIED TRUE COPY
[Handwritten signature] 5/11/2019
Court Associate
Supreme Court of Pakistan
Islamabad