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**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

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**Present:**

Mr. Justice Sajjad Ali Shah  
Mr. Justice Munib Akhtar

**Criminal Petition No.10-K of 2018**

(Against the judgment dated 21.12.2017 of the  
High Court of Sindh, Karachi passed in Crl.  
Appeal No.460 of 2011)

Muhammad Tariq ... Petitioner(s)

**Versus**

Court of District & Sessions Judge, Karachi  
(Central) and another ... Respondent(s)

For the Petitioner(s): Petitioner in person

For the Respondent(s): Mr. Hussain Bukhsh, Addl. P.G. Sindh

Date of hearing 03.07.2020

**ORDER**

**Sajjad Ali Shah, J.-** Despite repeated notice as well as publication in daily 'Jang' none has appeared on behalf of respondent No.2, for the obvious reason that the respondent No.2 after taking possession of the property in dispute by invoking the provisions of Illegal Dispossession Act, 2005 (hereinafter referred to as 'Act of 2005') has lost the interest in the present proceedings, consequently, we have decided to hear this case finally, especially when the petitioner is pressing this petition only against his conviction and is not interested in restoration of possession.

2. On merits, the petitioner is seeking leave of this Court against the judgment of the Sindh High Court whereby the said Court while maintaining the conviction of the petitioner under Section 3(2) of the Act of 2005 reduced his sentence to one already undergone without taking into consideration as to whether the petitioner has committed or attempted to commit any offence of illegally dispossessing someone which could be taken cognizance of under the Act of 2005.

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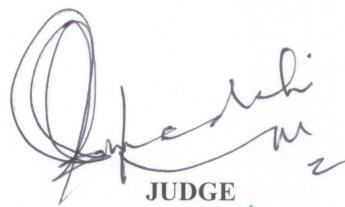
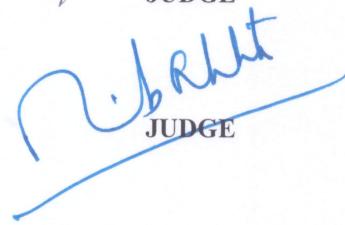
3. We have thoroughly scrutinized the complaint of respondent No.2 filed under Section 3 & 4 of the Act of 2005 before the District & Sessions Judge, Karachi (Central) but were unable to find any allegation against the petitioner illegally dispossessing or even attempting to illegally dispossess respondent No.2 and therefore, were totally at a loss as to how the provisions of the Act of 2005 were attracted to convict the petitioner. All what could be gathered from the complaint is that respondent No.2 complainant claimed to be the widow of late Fayyaz Ahmed (real brother of petitioner) who before his death was appointed administrator to administer the shares of his siblings in respect of a house owned by their father. In those proceedings, the Nazir allegedly had issued certain directions to vacate the portion in possession of the petitioner and upon non-compliance instead of seeking possession or compliance of the Court's order if any, passed under testamentary, intestate jurisdiction the respondent No.2/complainant resorted to proceed under the Act of 2005. It is astonishing to note that despite categorical statement of the respondent No.2/complainant who was examined by the trial Court as PW-1, to the effect that "*it is correct that as I never resided in the property in question, therefore, I was not illegally dispossessed from the said house*" the Court proceeded to convict the petitioner by declaring his occupation as illegal totally ignoring that the *vires* of Section 3 of the Act of 2005 is only attracted in cases where the complainant with a claim of ownership or occupancy is illegally dispossessed from an immovable property by the accused to grab, control or occupy it without any lawful authority. Sub-Section 1 of Section 3 of the Act of 2005 which defines the offence of illegal dispossession reads as follows:-

*"No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property."*

From the bare reading, it is clear that unless the accused enters into or upon any property with the intention to dispossess, grab, control or occupy it without having any lawful authority, from owner or occupier of such property, no offence under Sub Section (1) of Section (3) of the Act of 2005 is made out. Besides, this Court in a number of cases has held that for the purpose of attracting the provisions of

Section 3 of the Act of 2005, the Court is required to examine firstly; as to whether the property was an immovable property; secondly that the person was owner of the property or was in its lawful possession; thirdly that the accused has entered into or upon the property unlawfully and fourthly that such entry is with intention to dispossess i.e. ouster, evict or deriving out of possession against the will of the person in actual possession. Reference can readily be made to the cases of Muhamad Akram Vs. Muhamad Yousaf (2009 SCMR 1066), Gulshan Bibi Vs. Muhammad Sadiq (PLD 2016 SC 769), Waqr Ali Vs. State (PLD 2011 SC 181) and Mumtaz Hussain Vs. Nasir Khan (2010 SCMR 1254).

4. Admittedly, in the instant case the respondent No.2/complainant claimed to have acquired interest in the subject property allegedly through Court in administration proceedings and has categorically admitted that she was never in possession of the subject property and therefore, was never dispossessed, consequently, the vires of Section 3 of the Act of 2005 in the circumstances, could not have been attracted to convict the petitioner. We, therefore, convert this petition into appeal and allow the same by acquitting the petitioner of the charge of illegal dispossession.

  
JUDGE  
JUDGE

Karachi the,  
3<sup>rd</sup> July, 2020  
M. Azhar Malik/\*

