

JUDGMENT SHEET
PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)
Cr.A No. 158-M/2022

Muhammad Nasim Sahar through legal heirs
(1) Ubaidullah Anwar & others ...Appellants)

V/S

Nasib Zada & others(Respondents)

Present: - Mr. Sabir Shah, ASC, for the appellants.
Mr. Salman Zubair, Advocate for the respondents.
Mr. Kamal Khan, Astt: A.G, for State.

Date of hearing: **14.10.2025**

JUDGMENT

SALAH-UD-DIN, J.- Through instant criminal appeal preferred U/S 417 (2-A) of Criminal Procedure Code 1898 (“Cr.P.C”), R/W section 8-A of Illegal Dispossession Act, 2005 (“Act of 2005”), appellants have called in question order/ judgment of learned Additional Sessions Judge/ Judge Child Protection Court, Swat, dated 21.05.2022, whereby accused/ respondents have been acquitted of the charges levelled against them by allowing their application U/S 265-K Cr. PC.

2. Arguments of learned counsel for the parties as well as learned Astt: A.G for State were heard and requisitioned record gone through with their valuable assistance.

3. The matter in issue originated when the predecessor of the present appellants in his lifetime filed a complaint before the learned District & Sessions Judge, Swat, under Sections 3 and 4 of the Illegal Dispossession Act, 2005 (IDA-2005), against the respondents/ accused. According to the contents of the complaint, the complainant, Muhammad Naseem (late), asserted that he was the lawful owner and in possession of the property recorded in Khata No. 29, Khatoni No. 439, Survey No. 1254, situated in Revenue Estate Saidu Sharif, Tehsil Babuzai, District Swat. It was further alleged that, following a domestic partition among the co-owners/ possessors, possession of the said property was duly handed over to the complainant, who thereafter remained in continuous possession of the suit property for the last 30 years. The complainant alleged that during his lifetime he was unlawfully dispossessed by the respondents from the aforementioned property.

4. When subject complaint was filed, the statement of complainant was recorded U/S 200 Cr.P.C, through Local Commissioner Miss Nabila Advoate. After fulfilment of all legal formalities, the evidence of complainant was recorded in the case,

however, when the case was fixed for recording the statements of accused, learned counsel for accused/ respondents submitted an application U/S 265-K Cr.PC, on the ground that the accused/ respondents are innocent, the suit property is the ownership in possession of respondents, having made construction over there. In this regard registry bearing No. 172, Bahi No.1, Jild No. 3, pages No.65, 66 dated 30.05.2011 has been registered and after the construction an electricity meter has been fixed over there. As per contents of the said application the accused/ respondent requested that complainant party is not interested in the case as they are not appearing before the court and the case was several times adjourned on their behalf. The respondents have further submitted that the evidence produced by the complainant is not reasonable, and presenting any additional evidence against the respondents would amount to nothing but a waste of the valuable time of the Court, wherein, they prayed for dismissal of the complaint. Application of respondent's U/S 265-K, Cr.PC was allowed by the trial Court on 21.05.2022 and thereby respondents were acquitted

of the charges levelled against them, hence, this criminal appeal.

5. A bare look of record would reveal that main motive of the case is the alleged unlawful dispossession of Muhammad Naseem (late) from his legally owned and long-possessed property in Swat by the respondents, however, upon careful examination of the record and the evidence presented during trial, it is apparent that the complainant's case is riddled with significant inconsistencies and contradictions that undermine the credibility of the claims. While the complainant asserted ownership and continuous possession of the suit property for over thirty years, the testimonies of his own witnesses reveal substantial uncertainties. For instance, PW-1 and PW-2 could not conclusively establish the duration or nature of the complainant's possession, often contradicting themselves regarding the period of occupancy and the involvement of laborers. PW-3 admitted ignorance regarding the respondents' longstanding presence in the village and could not explain how the complainant allegedly acquired possession, highlighting gaps in knowledge

that cast doubt on the veracity of the complainant's assertions.

Further, PW-4, despite asserting that the respondents interfered in the property, conceded that the complainant's ownership was limited to a portion of the land and acknowledged that the respondents had established their residence prior to the complainant's construction. Similarly, PW-6 admitted that the respondents possessed legitimate rights over the property, and crucial documentary evidence, such as the mutation records and registry documents, confirm the respondents as co-owners. The complainant failed to produce any verified deed or official record supporting exclusive ownership, and the so-called fard submitted was neither exhibited nor corroborated by any official testimony.

Relevant portions of the cross examination of PW-1 are as under: -

مستغیث محمد نسیم کے شگلی میں دکانیں بھی موجود ہیں۔ میں دو دکانوں میں
مستغیث کا بطور کرایہ دار ہوں۔۔۔ میں نہیں کہہ سکتا کہ جائیداد متدعو یہ
ملزمان کے ساتھ سال 1980 سے ملزمان کے قبضہ میں چلی آرہی ہے کہ
نہیں۔

Relevant portions of the cross examination of PW-2 are as under: -

۔۔ ہم چار مزدور اراضی / مکان نسیم سحری میں کام کرتے تھے مذکورہ مکان
مستغیث میں میں نے عرصہ تیس سال قبل کام کیا تھا۔ اس وقت بھی تیس

سال قبل ملزمان کا پرانا مکان بھی موجود تھا۔ میری بات کا مطلب یہ ہے کہ 30/35 سال قبل ملزمان اراضی متدعوٰیہ کے ساتھ مکان میں مقیم تھے۔۔۔۔۔ یہ درست ہے کہ اراضی متدعوٰیہ پر اب ملزمان نے تین گراج موجود ہیں۔۔۔۔۔ میں اپنے ساتھ مزدوروں کے نام نہیں بتا سکتا۔۔۔۔۔ میں نہیں کہہ سکتا کہ ملزمان نے جہاں پر دکانات تعمیر کی ہیں وہ ان کی زر خرید ہے کہ نہیں۔

Relevant portions of the cross examination of PW-3 are as under: -

دیہہ ٹنگئی میں میں نصیب زادہ وغیرہ سے پہلے سے رہائش پذیر ہوں۔۔۔۔۔ مجھے علم نہیں ہے کہ نصیب زادہ وغیرہ بھی دیہہ ٹنگئی میں عرصہ قریباً 30/35 سال سے رہائش پذیر ہیں کہ نہیں۔۔۔۔۔ میں یہ نہیں بتا سکتا کہ محمد نسیم کتنی اراضی کے قبضہ دار ہیں۔۔۔۔۔ میں نہیں کہہ سکتا کہ ملزمان جائیداد متدعوٰیہ پر 30/35 سال سے قابض ہیں۔

Relevant portions of the cross examination of PW-4 are as under: -

گواہان ملتان خان اور تازہ گل آج عدالت میں حاضر ہیں۔ یہ درست ہے کہ مذکورہ گواہان یہ کہہ رہے ہیں کہ ہمیں وقوعہ کی نسبت کوئی معلومات نہ ہے۔۔۔۔۔ مستغیث جائیداد متدعوٰیہ میں مالک نہ ہے البتہ تین کنال کا قبضہ دار ہے۔۔۔۔۔ خسروہ مذکورہ میں پہلے ملزمان نے اپنا گھر تعمیر کیا تھا اور بعد میں ہم نے اپنا گھر تعمیر کیا۔

Relevant portions of the cross examination of PW-6 are as under: -

تصویر Ex.PW-6/3 میں جو دکانات تعمیر کئے گئے ہیں وہ دکانات تمام ملزمان نے مشترکہ طور پر تعمیر کئے ہیں۔۔۔۔۔ Ex.PW-6/3 میں دکانات کے پیچھے پتھروں کا وٹہ بھی ملزمان فریق نے ہمارے اجازت سے تعمیر کی تھی۔۔۔۔۔ از خود کہا کہ ملزمان فریق نے یہ سب ہماری اجازت سے کیا ہے۔۔۔۔۔ میں نے اپنے بیان میں درست طور پر دکاناتنگ کے جانب شرق مسئول الیم کے ظاہر کئے ہیں۔ تصویر Ex.PW-6/3 میں مستغیث کے مکان کا بھی کچھ حصہ نمایاں ہے جو کہ سرخ اینٹوں کی دیوار ہے۔

The evidence of all the witnesses fails to establish anywhere that the accused committed any offence; however, it is evident that the accused are co-owners of their respective shares. For this reason, the prosecution's evidence is replete with serious weaknesses.

6. It is also evident from the available record that the timeline of alleged dispossession, as testified by the complainant's witnesses, lacks consistency, with conflicting dates and unclear details, further eroding the reliability of the case. The absence of prompt action, such as the filing of an FIR at the time of alleged dispossession, reinforces the impression that the complainant's claims are not grounded in precise facts. In light of these contradictions, it is evident that suspicion alone cannot substitute for legal proof, and the case presented does not satisfy the standard required for establishing illegal dispossession under the IDA-2005. Consequently, based on the cumulative inconsistencies in witness statements, the admission of co-ownership by the complainant's own witnesses, and the absence of verifiable documentary evidence, it is reasonable to conclude that the

complainant has failed to substantiate his claim. The findings of the trial court, which acquitted the respondents, are therefore supported by the record, and the accused are entitled to acquittal.

7. Hon'ble Supreme Court of Pakistan in its judgment, rendered in case titled **“Bashir Ahmad v/s Additional Sessions Judge, Faisal Abad & others”** has formed the following view in respect of acquittal of accused U/S 265-K Cr.P.C that “the Trial Court rightly acquitted the respondents under S.265-K, Cr.P.C., as co-owners with registered deeds and possession in revenue records. The petitioner’s attempt to convert a civil dispute into a criminal case was an abuse of legal process, and the High Court’s dismissal of the constitutional petition was justified.”

[¹]

Likewise, in case titled **“Ishaque v/s Rasheed & 02 others”** reported as **PLD 2013 Baluchistan 6**, it was held by Hon'ble Baluchistan High Court that “The complainant was not the recorded owner and provided no supporting material. His own complaint admitted that part of the property had been gifted to the accused, and it did not specify

1. PLD 2010 Supreme Court 661 (“Bashir Ahmad v/s Additional Sessions Judge, Faisal Abad & others”)

when they occupied the land. These gaps cast serious doubt on the applicability of the Illegal Dispossession Act, 2005. The Trial Court rightly acquitted the accused under S.265-K, Cr.P.C., as no conviction was reasonably possible.” [2]

Similarly, in case titled **“Mrs. Naheed Rana v/s Naheeda Shamim & others”**, same ratio was earlier reiterated by Hon’ble Lahore High Court, that “the Trial Court may acquit the accused at any stage of the proceedings—whether at the initial stage, after taking cognizance, or even after recording some evidence—if it believes there is no likelihood of conviction. The phrase “at any stage” in Sections 249-A and 265-K Cr.P.C. is independent of the recording of prosecution evidence. [3]

8. Thus, conclusion of above discussion is that charge against accused was groundless on the strength of available record. Language of Section 265-K Cr. PC, plainly and clearly states that Court may acquit an accused person “at any stage of the case”. Our jurisprudence on acquittal u/s 265-K Cr. PC is very rich. For sake of guidance, this Court

2. *PLD 2013 Baluchistan 6 (“Ishaque v/s Rasheed & 02 others”)*

3. *2006 MLD 1489 (“Mrs. Naheed Rana v/s Naheeda Shamim & others”)*

consider it appropriate to refer to the recent case law.

In case of **“Abbas Haider Naqvi and another vs. Federation Of Pakistan and others”**, whereby Hon’ble apex Court has held that: -

“11. While the general practice discourages deciding a case under Section 265-K Cr.P.C. near the conclusion of trial, exceptions can justify such a course. Section 265-K allows the trial court to acquit at any stage—whether at the initial stage, on taking cognizance, or after recording some prosecution evidence. No rule can limit this statutory power when exceptional circumstances demand it to prevent abuse of court process or to serve justice. The High Court erred in not recognizing that an accused’s plea for acquittal under Section 265-K need not await full appraisal of prosecution evidence, as in the present case.”

12. Under Section 265-K Cr.P.C., an accused may seek acquittal if: (i) even assuming prosecution’s facts are true, no offence is made out; (ii) there is no incriminating evidence on record; (iii) evidence collected is insufficient to sustain conviction; or (iv) recorded prosecution evidence does not support

conviction and remaining evidence will not improve the case.” ^[4]

Other relevant cases, which merit mentioning here are *Abdul Ghani vs. The State (2020 P Cr. L J 1094)* and *Yasin Khan Baber vs. The State (1995 P Cr. L J 1424)*.

9. An accused person, as a matter of right, is presumed to be innocent before trial unless the charge is proved against him/her. Acquittal at the trial gives rise to double presumption of innocence for an accused. An appellate Court needs to be cautious while considering the evidence and should avoid reversal of an acquittal, unless it finds that the acquittal is perverse, conjectural, arbitrary, jurisdictionally defective and prompted by mis-reading or non-reading of evidence. Even if a contrary view is formed on re-appraisal of evidence, it should not be used to disturb an acquittal, provided convincing evidence is available on the record to reverse acquittal. In this respect, reference may be made to the judgment of the Hon’ble Apex Court rendered in the case of *Jehangir vs. Aminullah & others* reported as **2010 SCMR 491**, where it was held that “it is well-established that appellate courts generally do not

4. PLD 2022 Supreme Court 562 (“*Abbas Haider Naqvi and another vs. Federation Of Pakistan and others*”)

interfere with an acquittal merely because they might have reached a different conclusion; interference is justified only in exceptional cases where the acquittal is clearly perverse, artificial, or shocking, resulting in a grave miscarriage of justice. Acquittals carry a double presumption of innocence, which should not be disturbed unless material evidence was ignored, misread, or illegally received. [5]

10. In view of above discussion, this Court has reached to the conclusion that learned trial Court has rightly acquitted respondents/accused U/S 265-K Cr. PC. I find instant appeal being devoid any merits, same is accordingly *dismissed*.

Announcement

Dt: 14.10.2025

Sd/-

JUDGE