

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Appeal No.217 of 2019

Karamat Ullah
Versus
Muhammad Chanaras Awan and another

Appellant by: Mr. Abid Mehmood, Advocate.
Respondent No.1 by: Mr. Ghulam Fareed Chaudhry, Advocate.
State by: Mr. Zohaib Hassan Gondal, State Counsel.
Date of Hearing: 19.02.2020.

GHULAM AZAM QAMBRANI, J:- The appellant/ complainant (Karmat Ullah) being aggrieved from the judgment, dated 10.04.2019, passed by the learned Additional Sessions Judge-V, Islamabad- East, whereby the respondent has been acquitted from the charge, has filed instant Criminal Appeal.

2. Briefly stated facts of the case are that the appellant filed a complainant under Section 3 of the Illegal Dispossession Act, 2005, before the learned Additional Sessions Judge-V, Islamabad-East, alleging therein that he acquired on rent a constructed super structure of building for establishing a restaurant from the respondent through a lease agreement dated 30.08.2014 for a period of ten (10) years and the appellant paid an amount of Rs.2,50,000/- as advance rent and Rs.12,50,000/-, as security. Further, alleged that after lapse of two years, the respondent could not fulfill his promise to complete the super-structure and further

demanded an amount of Rs.13,00,000/- which were given through cheques dated 16.11.2015 and 28.12.2015, as such, the total amount of Rs.28,00,000/- has been paid by the appellant to the respondent, as advance and security. It has further been alleged that on 10.01.2016, the respondent handed over possession of the said building to the appellant and he started establishing a restaurant, decorated the walls of the super-structure. In this manner, he has spent approximately an amount of Rs.30,00,000/- for establishing the restaurant. Further contended that he is a resident of Quetta, and in those days he was at Quetta when the respondent along with some other persons had come to the said restaurant and forcibly evicted the staff of the appellant/ complainant, as such, has illegally dispossessed the appellant from the restaurant in his absence, also snatched goods and property of the appellant/ complainant, thereafter, converted the restaurant into Dubai Marriage Hall.

3. The learned trial Court after receiving the complainant recorded the cursory statement of appellant and sought a report from the S.H.O Police Station Koral with regard to allegations leveled against the respondent. After submission of the report, the learned trial Court issued notice to the respondent to face trial. After fulfilling the legal formalities, the learned trial Court framed charge against the respondent, on denial of the charge by the respondent, the appellant was directed to produce evidence.

4. The appellant/ complainant himself appeared as CW-1 and deposed as per the averments narrated in the complaint and

produced Azhar Shahab as CW-2, who deposed in line with the appellant/ complainant. He also produced copy of lease agreement Ex.PA, attested copy of cross-cheque of Rs.10 lac Ex.PB, copy of cross-cheque of Rs.3 lac Ex.PC, copy of civil suit for permanent injunction Ex.PD, report u.s 173 Cr.P.C. dated 04.11.2017 in F.I.R No.374/2017 Ex.PE and original receipts/ documents with regard to expenses incurred Ex.PF. Whereas, Saif Ullah Sub-Inspector/ Investigation Officer Police Station Bhara Kahu appeared as CW-3, who produced inquiry report as Ex.C1, statement submitted by the appellant/ complainant to him on 01.10.2018 as Ex.C2, copy of F.I.R No.374/2017 Ex.C3, statement of Azhar Shahab, submitted to Investigation Officer Ex.C4.

5. After closure of appellant/ complainant's evidence, statement of the accused/ respondent was recorded under Section 342 Cr.P.C. wherein he denied the allegations. The accused produced original receipts Ex.DA/1-128 having words "*Sohni Restaurant*", letter pads Ex.DB/1-2 having words "*Sohni Restaurant*", attested copy of plaint and proceedings of suit Ex.DC and report under section 173 Cr.P.C. dated 28.10.2017 submitted in F.I.R No.374/2017 Ex.DD.

6. After hearing the arguments of the learned counsel for the parties, the learned Trial Court acquitted the accused/ respondent of the charges, vide judgment dated 10.04.2019, hence, the instant appeal.

7. Learned counsel for the appellant contended that impugned judgment is against the law and facts of the case; that the conclusion drawn by the learned trial Court is based on surmises

and conjectures; that the impugned judgment is also based on misreading and non-reading of the record; that there is not an iota of evidence exist which could establish that possession was handed over by the appellant/complainant himself to the respondent. Further contended that there are illegalities and irregularities in the impugned judgment, therefore the same is liable to be set-aside.

8. Conversely, learned counsel for the accused/ respondent submitted that the accused/ respondent is totally innocent and has been dragged into this case with the malafide; that there is no evidence on record to connect the respondent with the commission of the alleged offence and the appellant/ complainant had failed to produce any cogent and convincing evidence to prove the case against the respondent, therefore, the learned trial Court has rightly acquitted the respondent from the charge. The learned State counsel supported the impugned judgment passed by the learned Trial Court.

9. Heard arguments of the learned counsel for the parties and perused the available record.

10. Bare perusal of the record reveals that no date and time of the alleged occurrence is mentioned in the complaint. CW-1 stated that on 27.10.2016 when he was in Quetta, he received a call from his manager that the respondent/ accused along with other persons has dispossessed the staff of the appellant/ complainant from the disputed premises. During the cross-examination, CW-1 admitted that the said premises was jointly taken on rent by him and one Mst. Nadia Bibi, who was looking after the affairs of the restaurant in the

subject premises and she had full control over the staff and management of the restaurant but strangely enough, the said lady was not produced before the learned trial Court as witness in the complaint. Record further shows that the complainant is not an eye witness of the alleged occurrence but he is deposing mere hearsay evidence. Further, CW-2 stated that on 27.01.2016, the accused persons entered in the restaurant premises and no one from the accused side even pushed him, as such, it seems that the alleged dispossession was quite peaceful.

11. Record further reveals that the appellant/ complainant lodged F.I.R No.374/2017 under Sections 448 & 420 P.P.C at Police Station Bharkahu, with regard to the same occurrence, but date and time of the alleged occurrence is mentioned as 22.09.2017 at 12:00 am whereas CW-2, eye-witness of the alleged occurrence, in his statement had mentioned the date as 27.01.2017. Further, CW-3 who is the Investigating Officer of the case and conducted a detailed inquiry with regard to the said occurrence, also did not mention the date of the alleged occurrence, in his report Ex.C1, as according to him, the complainant did not mention the date, month and year of the occurrence during the investigation. It further appears from the record that there was a dispute of rent between the parties and the complainant in para-5 of the complaint, has mentioned that just after five months of handing over possession of the premises the respondent started demanding more rent from the appellant, whereas it is the stance of the respondent that the complainant remained in possession of the subject premises till January, 2017

and thereafter, a Jirga was held and the possession of the premises was peacefully taken by the respondent in pursuance of decision of the jirga.

12. Record further reveals that the appellant/ complainant filed a complaint after more than two years of the alleged occurrence whereas CW.1 mentioned in his statement that he came after one week of the alleged occurrence, in Islamabad, and met the accused, who assured to pay the amount in the month of April, 2017, and remained contacted with him telephonically in the same month. He further stated that he also met the respondent in the month of November 2016 after coming from Quetta, which was after the date of alleged occurrence, which substantiated the stance of the respondent that negotiation between the parties led to holding of a jirga in the month of January, 2017 where-after the respondent took peaceful possession of the subject premises. Therefore, it is not proved on record that the respondent/ accused took the possession of the premises illegally and forcibly.

13. It is pertinent to mention here that considerations for interference in an appeal against acquittal and an appeal against conviction are altogether different, because presumption of double innocence is attached with the former case. The well settled principles for appreciation of appeal against acquittal, as have been held by the Hon'ble Supreme Court of Pakistan in the judgment reported as Muhammad Iqbal Vs. Abid Hussain alias Mithu and six others (1994 SCMR 1928), are as under:-

- i. That with the acquittal, the presumption of innocence of accused becomes double; one initial, that till found guilty he is innocent, and two, that after his Trial a Court below has confirmed the assumption of innocence;*
- ii. That unless all the grounds on which the High Court had purported to acquit the accused were not supportable from the evidence on record, Supreme Court would be reluctant to interference, even though, upon the same evidence it may be tempted to come to a different conclusion;*
- iii. That unless the conclusion recorded by a Court below was such that no reasonable person would conceivably reach the same, the Supreme Court would not interfere;*
- iv. That unless the Judgment of acquittal is perverse and the reasons therefore are artificial and ridiculous, the Supreme Court would not interfere; and*
- v. That the Supreme Court, however, would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion, and that too, with a view only to avoid grave miscarriage of justice and for no other purpose.*

14. Keeping in view the above principles, it transpires from the record that there are contradictions in the statement of the complainant with regard to the date, time and month of the alleged occurrence, as in the complaint the complainant mentioned the date of the alleged occurrence as 27.10.2016, whereas in the F.I.R No.374/2017 (Ex.C3), the date and time of the alleged occurrence has been mentioned as 22.09.2017 at 12.00 am. Even otherwise, Mst. Nadia Bibi, who was running the affairs of the restaurant, has not been produced by the complainant in support of his version. Further the complaint has been filed after more than two years of the alleged occurrence, which creates doubts in the story narrated by the complainant. As such, the learned Trial Court has rightly acquitted the accused person from the charge under Section 3 of the Illegal Dispossession Act, 2005.

15. In the case reported as Sanaullah Vs. The State through Prosecutor General (2015 P.Cr.L.J. 382 (Balochistan), it has been held that as under:-

"Rule of prudence, stipulated that prosecution had to prove its case beyond the shadow of doubt. Accused had not to prove his innocence, until and unless proved guilty. Benefit of slightest doubt would necessarily be extended in favour of accused and not otherwise."

In the case reported as Raheel and others Vs. The State and others (2015 P.Cr.L.J. 470), it has been held that:-

"If any doubt would arise from the prosecution evidence, benefit of same was to be extended to accused."

16. The learned Trial Court after proper appraisal of evidence and material available on record has rightly concluded that the complainant has failed to prove the allegations against the accused by producing sound, cogent and convincing evidence and accordingly acquitted the respondent from the charge.

17. I have found no illegality or irregularity in the impugned judgment, nor the same is suffering from any misreading or non-reading or miss-appreciation of evidence, warranting interference by this Court.

18. Resultantly, the instant appeal having no force, is **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

ANNOUNCED IN OPEN COURT ON 28-2/2020.

JUDGE

"Rana.M.Ift"