

JUDGMENT

AAMER FAROOQ, J.--- The facts, leading to the filing of the instant Criminal Revision, are that the petitioner filed a complaint before the Sessions Judge (East), Islamabad under the Illegal Dispossession Act, 2005 against respondents Nos. 1 to 3. It was alleged in the complaint by the petitioner that he is the legal and lawful owner of the property measuring 4 K 2 Marlas in Khewat No. 523, Khasra Nos. 3211, 3217, 3218, 3215, 3221 situated at G.T. Road, opposite DHA, Phase-II, Islamabad. In this behalf, it was further alleged that the complainant/ petitioner purchased the said property, paid the consideration amount and erected a boundary wall around the same and posted a guard, however, on 03.05.2014, respondents Nos. 1 to 3 forcibly and illegally dispossessed the petitioner. After preliminary examination of the case, summons were issued to respondents Nos. 1 to 3 and they were duly charged on 22.10.2014. During the course of trial, it was observed that the complainant is not appearing in person and as a result whereof, on 19.02.2015, vide the impugned order, the complaint was dismissed under section 247, Cr.P.C. and the accused were acquitted from the charge.

2. At the very outset, learned counsel for respondents Nos.1 to 3 objected to the maintainability of the instant petition in light of the fact that effect of section 247, Cr.P.C. is that the accused are acquitted of the charge hence application for leave to appeal should have been filed under section 417(2), Cr.P.C. and not the revision petition.

3. Learned counsel for the petitioner while responding to the objection contended that revision petition is maintainable inasmuch as there is gross illegality committed by the trial court. In support of contention, learned counsel placed reliance on cases reported as Syed Tahir Mehmood Shah v. Syed Iftikhar Hussain Shah and others (2012 PCr.LJ 927), M.N. Salar v. The State and 3 others (1998 PCr.LJ 1909), Mst. Akhtar Bano v. Umar Baz and another (2006 P.Cr.LJ 1101), Gul Hassan v. Muhammad Usman and 4 others (2012 PCr.LJ 268), Muhammad Amin v. M. Ilyas Dadoo (2008 YLR 2824), Arif Ali Khan and another v. The State and 6 others (1993 SCMR 187) and Bahadur and another v. The State and another (PLD 1985 SC 62). Learned counsel also contended that if the court comes to the conclusion that revision is not maintainable, it can convert the same into an appeal. Reliance was placed on the State v. Aftab Ahmad (2007 SCMR 1017), Habibullah and another v. The State and 9 others (2009 MLD 1162) and Karim Dad v. Muhammad and others (1980 PCr.LJ 1272).

4. Learned counsel for respondents Nos.1 to 3 contended that where acquittal is passed in a private complaint, the revision is not maintainable. Reliance is placed on Muhammad Bakhsh v. Iqbal Ahmad alias Ahmad and another (1980 PCr.LJ 191), Zahoor and another v. Said-ul-Ibrar and another (2002 PCr.LJ 181) and Mst. Neelam Parveen v. The State and 7 others (2012 PCr.LJ 581).

5. Arguments advanced by the learned counsels for the parties have been heard and the documents placed on record examined with their able assistance.

6. The relevant facts for the adjudication of the controversy in question have been mentioned hereinabove, therefore, need not be reproduced.

7. Admittedly, the petitioner instituted a complaint under the Illegal Dispossession Act, 2005 against respondents Nos. 1 to 3 and the referred complaint was dismissed on 19.02.2015 due to absence of the complainant and the referred respondents were acquitted of the charge. Under section 247 of the Code of Criminal Procedure, 1898, where a complainant does not appear, the trial court shall acquit the accused unless for some reasons he thinks proper to adjourn the hearing of the case to some other day. Under the second proviso of the section, it does not apply to the offence where the accused is charged with an offence which is either cognizable or non-compoundable. In this behalf, as mentioned above, the petitioner initiated the proceedings under section 3 of the Illegal Dispossession Act, 2005 and the Court under section 4 *ibid*, takes cognizance where contravention of section 3 is made out on a complaint; under subsection (2) of section 4, the offence is non-cognizable. Since offence is non-cognizable, hence section 247, Cr.P.C. is applicable as is aim clear from the judgment reported as Mst. Neelam Parveen v. The State and 7 others (2012 PCr.LJ 581). The effect of

the non-appearance of the complainant under section 247(1) is that accused is acquitted of the charges and where such is the case, section 417, Cr.P.C. is relevant. Under the referred section, the appeal in case of acquittal lies under subsection (2), if the order of acquittal is passed in any case instituted upon a complaint and the High Court, on application made to it by the complainant, grants special leave to appeal from the order of acquittal, the complainant may prefer such an appeal to the High Court. There is no provision of appeal in the Illegal Dispossession Act, 2005, however, Criminal Procedure Code has been made applicable hence on the basis thereof, the provision of Appeal and Revision, provided in the Code, are by implication held to be applicable. The petitioner had remedy of filing of application for leave to appeal within 60 days from the date of the order but he did not do so and instead instituted Criminal Revision. During the course of proceedings, no request was even made for conversion of the revision petition into application for leave to appeal. The revisional powers of the High Court are provided in sections 435 and 439 of the Cr.P.C. Under subsection (5) of section 439, it is provided that where an appeal lies and no appeal is brought, no proceedings shall be entertained at the instant of the party who could have appealed. Reliance is placed on Muhammad Bakhsh v. Iqbal Ahmad alias Ahmad and another (1980 PCr.LJ 191), Zahoor and another v. Said-ul-Ibrar and another (2002 PCr.LJ 181) and Mst. Neelam Parveen v. The State and 7 others (2012 PCr.LJ 581). There is no cavil with the principle laid down in the judgment relied upon by the learned counsel for the petitioner, however, as noted above, remedy was available to the petitioner under section 417(2), Cr.P.C. but neither the same was availed nor any request was made for conversion. Even otherwise, learned counsel for the petitioner failed to point out any illegality or error of law committed by the learned trial court while dismissing the complaint.

8. In view of the foregoing, the instant petition is without merit, hence is dismissed.

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