

**PESHAWAR HIGH COURT, MINGORA BENCH**  
**(DAR-UL-QAZA), SWAT**

**FORM OF ORDER SHEET**

Court of .....

Case No..... of.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	Date of hearing <b>12.02.2020</b> Date of announcement <b>19.02.2020</b>	<p><b><u>Cr.M No. 03-M/2019 (Leave to appeal)</u></b></p> <p>Present: Mr. Naveed Ali Khan, Advocate for the petitioner.</p> <p>Mr. Wilayat Ali Khan, A.A.G. for State.</p> <p>Syed Sultanat Khan, Advocate for Respondent No.2.</p> <p style="text-align: center;">***</p> <p><b><u>SYED ARSHAD ALI, J.-</u></b> This judgment of mine is aimed to decide the issue of maintainability of the instant application for leave to appeal and the connected Criminal Appeal No. 250-M/2016 through which the judgments and orders of the trial Courts have been challenged whereby complaints of the present petitioner and appellant in the connected appeal under the Illegal Dispossession Act, 2005 <b>(the Act)</b> were dismissed and respondents in both the cases were acquitted. The common question of law i.e maintainability of appeal under the Act is involved in both the cases, which is decided through this single order.</p> <p><u>2.</u> The learned counsels for the respondents in</p>

both the cases have raised a preliminary objection on the maintainability of the appeal stating that under section 8-A of the Act, only appeal against conviction of the accused under section 3 of the Act is maintainable whereas appeal against his acquittal or dismissal of complaint is not maintainable because the provisions of the Code of Criminal Procedure (**the Code**) has very limited application as provided under section 9 of the Act.

3. Against that the learned counsels for the petitioners in both the cases have argued that not only appeal against conviction of the accused facing trial of the Act is maintainable but order passed by trial Court under section 3 of the Act, be that acquittal or dismissal of complaint, is also now maintainable before this Court. Both the parties have relied on the following case law.

"Pir Farman Ali Shah and 10 others Vs. Yousaf Khan and 4 others" 2019 MLD 1622 [Peshawar (Bannu Bench)], "Zafar Iqbal Vs. The State and 5 others" 2012 P Cr.LJ 507 [Lahore], "Mian Sharif Khan Vs. Nawab Khan and 5 others" PLD 2011 Peshawar 86, "Mian Bahadur Jan Vs. The State and another" PLD 2009 Peshawar 70, "Yafas Vs. The State and other" PLD 2007 Peshawar 123 and "Faiz Muhammad and others Vs. Mehrab Shah and others" PLD 1997 Peshawar 166.

		<p><u>4.</u> Arguments heard and record of the case was perused.</p> <p><u>5.</u> The aforesaid law referred by learned counsels for the parties have no application to the present issue because in the said case law the issue before the Court was maintainability of appeal against any order passed under the Act prior to insertion of Section 8A in the Act. However, in the case of <i>Mian Sharif Khan supra</i>, a Division Bench of this Court has held that under the Act, the right of appeal is not available even to a convicted person under the Act. Similarly, the law laid down by this Court in the case of <i>Pir Farman Ali Shah supra</i>, wherein it was held that appeal against acquittal under section 417 of the Code is maintainable, the ratio of the law laid down by the Division Bench of this Court in <i>Mian Sharif Khan's</i> case was not considered.</p> <p><u>6.</u> In the context of the present cases, the complainants in their respective complaints before the trial Court in both the cases have asserted their illegal dispossession from the disputed property and have invoked the provisions of Sections 3 to 8 of the Act for initiation of legal action against the respondents. In order to comprehend the issue, I would like to reproduce the relevant provisions.</p>
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counsels for the respondents. Unlike the Code, which has provided elaborately appeals against the orders of acquittal and conviction of a criminal Court, Section 8-A of the Act is absurd. However, on close perusal of the two words of the provision i.e ***“any order”*** occurring in section 8-A of the Act has a wider connotation and exhibit the intention of the law maker. The word ***“any”*** is indeed a word of wider meaning which prima facie means ***“without limitation”***. In the case of *“Lakhi Barua v Union of India”* (AIR 2008 Cal 59 (DB)), the word ***“any”*** has been explained as under:-

**“The word ‘any’ dictionary means ‘one or some or all’. In Black’s Law Dictionary (6<sup>th</sup> edn) it is explained thus: “Word ‘any’ has a diversity of measuring and may be employed to indicate ‘all’ or ‘every’ as well as ‘some’ or ‘one’ and its meaning in a given statute depends upon the context and subject-matter of the statute”.**

Similarly, the word ***“order”*** when not defined or explained in the Act, would be held equivalent to or synonymous to the word ***‘decision’***. In the the case of *“Beneth Coleman & Co v. ITO (1983) 141 ITR 239, 245 (Bom)”* the Indian High Court has explained the word ***“order”*** as ***“grant or refusal of consent would be an ‘order’”***.

Indeed, the words ***“order”*** or ***“judgment”*** are to be interpreted in the context of a statute where it occurs. In the Act, the trial Court (Court of Sessions Judge or



Additional Sessions Judge) has been empowered to take cognizance of the matter under the Act. The Act empowers the Court to pass various orders during the proceedings.

8. Section 3 (1) of the Act makes illegal occupying of the property as an offence and sub-sections (2) and (3) thereof provides the punishment for illegal occupation of the property. It is the discretion of the trial Court, either to acquit or convict the accused or even dismiss the complaint, if found non-maintainable, keeping in view the law and evidence on record. The said order of acquittal of the accused, dismissal of the complaint or conviction of the accused would fall within the mischief of word "**order**" and are thus appealable in terms of section 8A of the Act. Similarly the dismissal of the complaint will have the same consequence because the complaint, as provided in the Act, is not synonymous with the complaint as provided in section 4 (h) of the Code.

9. In light of the above discussion, appeal against the order of acquittal passed by trial Court under the Act is maintainable. Through this application the Petitioner has sought leave of this court to file an appeal under section 417 of the Code, which is accordingly converted into appeal in view of the law laid down by the August Supreme Court of Pakistan in "Muhammad Akram Vs. DCO Rahim Yar

Khan" 2017 SCMR 56. The Office shall make necessary amendment/rectification in the memo of this petition as well as in the relevant register. Since the Respondent accused in the instant case is present in the court, therefore he shall submit a personal bond for his appearance for an amount of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the trial Court, returnable to the Additional Registrar of this Court. The issue regarding maintainability of the connected Cr.A No. 250-M/2016 against acquittal of the accused is decided accordingly. The accused/respondents in the said appeal shall also submit personal bonds in the sum of Rs.50,000/- each with two sureties for their appearance to the satisfaction of the trial Court. To come up alongwith the connected Cr.A No. 250-M/2016 on 08.4.2020.

Announced  
19.02.2020

  
JUDGE