

**IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)**

Cr.A No.274-B/2017

**Pir Farman Ali Shah
Vs
Yousaf Khan and others.**

JUDGEMENT/ORDER.

Date of hearing 09.04.2019

Petitioner (s) by: **By Pir Amjad Ali Shah and Tariq
Mehmood Khan, Advocate.**

Respondent(s) by: **By Mr. Bashir ur Rehman,
Mati Ullah Khan Marwat & Sultan Mehmood,
Advocate.**

MUHAMMAD NASIR MAHFOOZ, J.- The appellant through instant appeal has challenged the validity of order dated 23.9.2016 passed by learned Additional Sessions Judge-I, Bannu, in complaint case No.4 of 2014 whereby complaint of the appellants has been dismissed and the respondents/accused were acquitted.

2. Brief facts of the case are that Pir Farman Ali Shah and 10 others have filed complaint under sections 3,7 and 8 of the Illegal Dispossession Act, 2005 against Yousaf Khan and 03 others, respondents, in respect of

immovable property situated at Mouza Meta Khel, Bannu, fully detailed in heading of the complaint. It has been contended in the complaint that complainants are actual owners in possession of the said property out of which 52 knalas and 03 marlas have been forcibly occupied by respondents on two different dates i.e. 15.7.2013 and 19.11.2013 by driving out their tenants. Complainants alleged that respondents are property grabbers and desperate criminals while complainants belong to a respectable Syed family of the area and they tried their level best through elders to restrain respondents from their wrong doing but in vain and they kept on usurping the produce of the property in dispute. That the respondents have no lawful justification in occupying the property while complainants have authentic documents of title and revenue record in their favour. The appellants/ complainants requested for legal action against the respondents and restoration of possession of the property.

3. On receipt of the complaint, learned trial Court directed the SHO concerned to inquire into the

matter and submit inquiry report within the meaning of section 5 of the ibid Act. He submitted his report. Respondents were summoned. They appeared and charge was framed against them under section 3 of the Illegal Dispossession Act, 2005, to which they pleaded not guilty and claimed trial.

4. In support of the allegations complainants recorded statements of Rashid Khan, Patwari Halqa, Abdullah Khan ASI, I.O, Sajjad Akhtar Shah, Riaz Ali Shah and Pir Farman Ali Shah (complainants) as PW-1 to PW-5 respectively. After closure of complainants' evidence, statements of respondents were recorded under section 342 Cr.P.C, wherein they denied the allegations, however, they neither wished to be examined on oath nor to produce defence. On conclusion of trial, the learned trial Court dismissed the complaint vide its judgment dated 23.9.2016. Hence, the instant appeal.

5. I have heard arguments of learned counsel for the parties and perused the record.

6. Learned counsel for the respondents raised a preliminary objection that the instant criminal appeal is not maintainable as the impugned order of acquittal does not fall within the provisions of subsection 2 and subsection 3 of section 3 of the Illegal Dispossession Act, 2005. Learned counsel for the appellant controverted his arguments and supported his appeal.

7. For the decision of the preliminary objection reference is made to section 9 of the *ibid* Act, which is reproduced as under:-

“9. Application of Code. Unless otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1898 (V of 1898), shall apply to proceedings under this Act.”

In view of section 9 the Code of Criminal Procedure is applicable and where no specific provision exists, relevant provision from the Code of Criminal Procedure could be resorted. Under section 417 Cr.P.C appeal against acquittal lies before the High Court and therefore, the instant appeal is maintainable.

8. The complaint under section 3,7 and 8 of the ibid Act filed by the present appellants reveals detailed allegations of their forcible dispossession from the suit property comprising several Khasra numbers measuring 52 kanals 3 marlas. Their cultivators were alleged to be restrained from cultivation of 6 kanals and 10 marlas of land comprising Khasra Nos. 517 and 520 on 15.7.2013 while the property is alleged to be taken into possession on 19.11.2013.

9. Initially, when the learned trial Court received the complaint, he directed the local police official for a report in the light of said allegations. Firstly, learned trial Court appears to have not recorded the statements of complainants under section 200 Cr.P.C which is essential requirement for proceeding with the complaint, secondly, in pursuance of his direction the police submitted his report on 04.5.2014 in a vague and in violation of the relevant provisions of the Police Order, 2002 and Police Rules. Investigation officer of police station Mandan was legally bound to conduct an in-depth inquiry associating

both the parties by recording their statements as it is legally done in a case initiated through first information report under section 154 Cr.P.C., for the reason that a private complaint has all the characteristics of an FIR, when it is initiated. No effort whatsoever has been made by the police officials to strictly comply with the relevant provisions of law. Such vague report was not taken notice by the learned trial Court and deviation from the routine procedural requirements has rendered the impugned order ab-initio, void, which has to be interfered with in the instant criminal appeal. The said vague report further loses its value in juxtaposition with the cross-examination of Patwari Halqa as PW-1, specifically, his admission to the effect that he prepared the report in Patwar Khana and handed over the same to the police besides the fact that the complainants or accused were not even present at that time. So, not only the inquiry of police but the revenue officials have also not made any effort to conduct an impartial inquiry in a proper manner.

10. Since the procedural irregularity has rendered

the impugned order null and void, therefore, without giving any findings on the pro and contra contentions of both the parties, I deem it appropriate to accept the instant appeal, set aside the impugned order and remand the case back to the learned trial Court for trial *de novo* after detailed investigation by police. Learned trial Court shall procure fresh bail bonds from the accused/respondents.

Parties are directed to appear before the learned trial Court on 17.4.2019.

Announced.
09.4.2019

J U D G E

Ihsan

(S.B)
Hon'ble Mr. Justice Muhammad Nasir Mahfooz.