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REGISTERED
No.Crl.A.510/2018 &
Crl.P.685/2018- SCJ
SUPREME COURT OF PAKISTAN
Islamabad, 18 Oct 2018

From The Registrar,
Supreme Court of Pakistan.
Islamabad.

To The Registrar,
Peshawar High Court.
Peshawar.

Subject: **CRIMINAL APPEAL NO.510 OF 2018**
OUT OF
CRIMINAL PETITION No.693 OF 2018
AND
CRIMINAL PETITION No.685 OF 2018
Zigrawar @ Aigre S/o Sarwar & others
Roidad Khan
Versus
Roidad Khan & another
Zigrawar alias Aigre and others

(in Crl.A.510/2018)
(in Crl.P.685/2018)

(in Crl.A.510/2018)
(in Crl.P.685/2018)

On appeal from the Order/Judgment of the Peshawar High Court,
Peshawar dated 06/04/2018 in Cr.A.715-P/2017

Dear Sir,

I am directed to enclose herewith a certified copy of the Order/Judgment
of this Court dated 15/10/2018 converting into appeal and allowing the
Crl.P.No.693/2018 and dismissing the Crl.P.No.685/2018 in the terms stated therein for
information and further necessary action.

Please acknowledge receipt of this letter along with its enclosure
immediately.

Encl: Order/Judgment:

Yours faithfully,

(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Peshawar High Court Peshawar			
Receipt No		Date: 20/10/18	
1- MIT		6- PSO	
2- Dir (HRC)		7- DBA	
3- Dir (ReG)		8- DIT	
4- Dir (HR.W)		9- AR(J)	✓
5- DPD		10- AR(G)	

@CFMS

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE SARDAR TARIQ MASOOD

Crl. Petition No. 685 of 2018 &
Crl. Petition No. 693 of 2018

(Against the judgment of the Peshawar High Court, Peshawar dated
06.04.2018 passed in Crl. Appeal No. 715-P of 2017)

Roidad Khan (Crl.P. 685)
Zigrawar @ Aigre etc (Crl.P. 693) ... Petitioner(s)

VERSUS

Zigrawar @ Aigre and others (Crl.P. 685)
Roidad Khan & another (Crl.P.693) ... Respondent(s)

For the Petitioner(s) : Mr. Mazullah Khan Barkandi, ASC
(in Crl.P. 685/2018)

Mr. Asad Jan, ASC
(in Crl.P. 693/2018)

For Respondents No. 1-4: Mr. Asad Jan, ASC
(in Crl.P. 685 of 2018)


Date of hearing : 15.10.2018

ORDER

Manzoor Ahmad Malik, J.-..... Crl. Petition No.

685 of 2018: By filing the instant petition, the petitioner has called in question the judgment dated 06.04.2018, whereby the criminal appeal filed by him against the acquittal of respondents was disposed of with the observation that "property under consideration, shall be restored to the appellant in terms of section 8 of the Illegal Dispossession Act". Accordingly the learned High Court modified the

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Court Associate
Supr. of Pakistan
Islamabad

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judgment of acquittal of learned trial Court in favour of respondent to the said extent and the case was remanded to the learned trial Court to proceed in terms of Section 8 of the Illegal Dispossession Act. In the memo of instant petition, the petitioner has challenged the impugned judgment to the extent of not convicting and not awarding punishment to the respondents in terms of sections 3/4 of the Illegal Dispossession Act, 2005.

2. After hearing the learned counsel for the petitioner and learned counsel for respondents No. 1 to 4 at length and perusal of available record, it has been observed by us that the petitioner filed a complaint under section 3 of the Illegal Dispossession Act, 2005 before the learned Additional Sessions Judge-IV, Mardan. After due process, the respondents were summoned and were charge sheeted. The evidence was recorded and on conclusion of trial, the learned trial Court, vide its judgment dated 28.02.2015, dismissed the complaint of the petitioner with the following observations:-

"16. As per available record, the dispossession of the complainant from the impugned land has not been established as the essential ingredients required to prove on record are (1) That land was in possession of complainant (2) that complainant was illegally without due process of law was dispossessed from the said land with the specific reference of time and date.

17. In the light of my above discussion, the instant complaint is dismissed being not proved

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Supreme Court of Pakistan
Islamabad**

and accused/respondents are acquitted from the charge.....”

3. Having gone through the evidence available on record, it has been observed by us that the findings of acquittal rendered by the learned trial Court are based on proper appreciation of evidence available on record and the learned High Court has rightly not interfered with the aforesaid findings. Even before this Court, learned counsel for the petitioner was not able to establish the lawful possession of the disputed land by the petitioner or that he was illegally dispossessed by the respondents. In these circumstances, the instant petition is without merit, which is dismissed accordingly. Leave to appeal is refused.

Crl. Petition No. 693 of 2018

4. Through this petition, petitioner Zigrawar @ Aigre and others (respondents in the connected petition) have called in question the judgment dated 06.04.2018, whereby the criminal appeal filed by the respondent No.1 Roidad Khan (petitioner in the connected petition) against the acquittal of petitioners (herein) was disposed of. The learned High Court while passing the impugned judgment did not interfere with the findings of acquittal rendered by the learned trial Court, however, made the following observations, against which the instant petition is directed:-

“15. Therefore, for the aforestated reasons, this appeal is disposed of in terms that property

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under consideration, shall be restored to the appellant in terms of section 8 of the Illegal Dispossession Act. The impugned judgment is modified to such extent and the case is remanded to learned trial Court to proceed in terms of section 8 of the Illegal Dispossession Act, in order to deliver the property to appellant. In case of any hurdle, resistance either by respondents or any other person on their behalf, the learned trial Court shall exercise its jurisdiction under sub-section (2) of section 8 of the Act, in order to direct the officer-in-charge of the concerned police station for such assistance necessary for restoration of the possession of the property to the appellant."

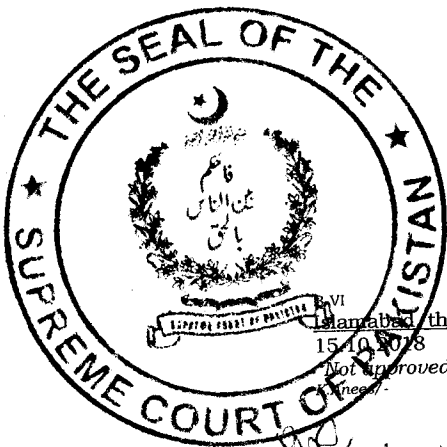
5. After hearing the learned counsel for the petitioner and learned counsel for respondent No.1 (petitioner in the connected petition) at length, and perusal of available record, it has been observed by us that the petitioners earned their acquittal after regular trial by the learned trial Court. The learned trial Court has also observed in its judgment that the dispossession of the respondent No.1 from the impugned land has not been established. Even before this Court, learned counsel for respondent No.1 (petitioner in the connected petition) was not able to point out anything from the record to show that the disputed land was under his lawful possession at the relevant time and that he was unlawfully dispossessed from the said land. In these circumstances, the observation of the learned High Court in the impugned judgment to the extent of restoration of disputed property to respondent No.1 in terms of section 8 *of the Illegal Dispossession Act (Para 15 as reproduced

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above) is uncalled for. Therefore, the instant criminal petition is converted into an appeal and the same is partly allowed. The observation given by the learned High Court to the extent of restoration of disputed property to respondent No.1 in terms of section 8 of the Illegal Dispossession Act, (in Para 15 of the impugned judgment) is set aside. During the course of arguments, it has been stated by the learned counsel for the petitioners that qua the title of the disputed land, litigation on civil side is pending between the parties. In these circumstances, it is made clear that the observations given in the instant judgment, any observations made in the impugned judgment or in the judgment of the learned trial Court will not, in any manner, prejudice the case(s) of either of the parties, if so pending before any forum.

Disposed of in terms noted above.



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Islamabad, the
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Not approved for reporting
17/10/18

Certified to be True Copy

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

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