JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No. 455 of 2023

Zahid Hafeez Alvi

VERSUS

Sardar Tahir Khan Niazi and another

APPELLANT BY:	M/s Abdul Rehman Hur Bajwa, Atif Shafiq and Sharafat Ali Chaudhry, Advocates
RESPONDENTS BY:	Mr. Iftikhar Ahmed Cheema, Special Public Prosecutor Mr. Bilal Hassan Sabri, Advocate along with respondent No.1. Mr. Khalid Tanoli, S.I. P.S Phulgaran, District Islamabad.
DATE OF DECISION:	23.09.2026

==========

***AYYAZ SHAUKAT, J*:-** The appellant is the complainant of case F.I.R. No.03 of 2022 dated 22.08.2022, registered under sections 447 and 427 of the Pakistan Penal Code, 1860 (the **"PPC"**) at Police Station Phulgaran, Islamabad, and assails the order dated 05.12.2023 passed by the learned Judicial Magistrate Section 30, Islamabad (East), whereby an application of respondent No.1, Sardar Tahir Khan Niazi, under section 249-A of the Code of Criminal Procedure, 1898 (the **"Code"**) was accepted and he was acquitted of the charge. The appellant prays that the impugned order be set aside and the case remanded to the learned trial court for decision on merits.

2. The prosecution case, as set out in the F.I.R., is that the appellant's father, Abdul Hafeez Alvi, had purchased a plot measuring one kanal in Khewat No.682, Khatooni No.1609, Khasra No.2039, Mouza Phulgran, Islamabad, through registered sale deed No.2270 dated 08.08.1994. He constructed a boundary wall around the plot, which remained in the family's

Islamabad High Court

care. Owing to the COVID-19 pandemic and his father's illness, the appellant could not visit the plot for approximately five or six months. Upon visiting it on 06.06.2022, he found that the lock had been broken and replaced and that the name and mobile phone number of respondent No.1 had been written on the boundary wall. Alleging that the plot had been unlawfully occupied, the appellant submitted an application to the SP City for registration of an F.I.R. The F.I.R. further records that, pursuant to the application, a revenue officer reported on 21.07.2022 that the plot was owned by the appellant's father. His father subsequently passed away on 30.07.2022, which, according to the appellant, prevented him from promptly pursuing registration of the F.I.R. The F.I.R. was registered approximately three weeks after his father's death.

3. Upon the conclusion of the investigation the report under section 173 of the Code was submitted, followed by a supplementary report to which the report of the revenue officer was appended. Copies under section 241-A of the Code were supplied on 03.12.2022. The charge was framed on 29.03.2023. It alleged that on 06.06.2022 respondent No.1 trespassed upon the land of the complainant and tried to occupy it, and that he caused damage to the property of the complainant by demolishing the boundary walls. Respondent No.1 pleaded not guilty.

4. Respondent No.1 then moved his application under section 249-A of the Code. He pleaded that he had been falsely implicated; that the matter was one of a civil nature; that he had himself purchased land in the same revenue estate along with its possession; that an inquiry had been held under the orders of the Superintendent of Police (City Zone), during which both parties were directed not to claim ownership of the plot till the finalisation of a detailed inquiry; that no proper demarcation was ever carried out by the police or the revenue authorities; and that there was no probability of his conviction.

Islamabad High Court

5. The learned trial court accepted the application. It noticed that the complainant relied upon the registered sale deed of 1994. It also noticed the report of the Revenue Officer, which forms part of the supplementary challan. That report showed the father of the complainant as owner in Khasra No.2039 under the sale deed. It showed respondent No.1 as owner of eighteen marlas in the same revenue estate, through mutations No.33340 dated 12.12.2019 and No.34598. The learned trial court further noticed that respondent No.1 had instituted a civil suit against the complainant for declaration, partition and permanent injunction in respect of his eighteen marlas. It concluded that both parties were recorded owners in their respective khasras, that the real dispute between them was one of demarcation and partition, and that such a dispute could be resolved only by the civil court upon evidence. In view of the civil litigation, an ulterior motive in the registration of the F.I.R. could not be ruled out. A lengthy trial would therefore be a futile exercise, since the conviction of respondent No.1 was not probable.

6. Learned counsel for the appellant contended that respondent No.1 is specifically named in the F.I.R. with the allegation that he forcibly occupied a plot which the father of the appellant had owned and possessed since 1994. He submitted that the ownership documents are on the record and that the revenue authorities had verified, in their reports dated 21.07.2022 and 27.10.2022, that respondent No.1 had forcibly occupied the plot. His principal submission was that the acquittal rests upon the pendency of a civil suit which, on the date of the impugned order, was not pending at all, having been dismissed for non-prosecution. Relying on ***Nur Elahi v. The State*** **(PLD 1966 SC 708)**, he submitted that civil and criminal proceedings may proceed side by side, and that the pendency of a civil suit is, in any case, no ground for acquittal. He further contended that the learned trial court, having framed the charge upon a tentative assessment of the

Islamabad High Court

material, could not acquit respondent No.1 before a single witness had been examined, and that it had acted upon the defence version rather than upon the prosecution material. He added that respondent No.1 is neither a co-owner nor a co-sharer in the khasra of the appellant, and that a complaint of the appellant under the Illegal Dispossession Act, 2005 is pending before the learned Additional Sessions Judge, Islamabad (East).

7. Learned counsel for respondent No.1 supported the impugned order. He submitted that respondent No.1 purchased eighteen marlas in the same revenue estate in 2019 through a registered instrument and duly attested mutations; that he instituted his civil suit on 28.07.2022, before the F.I.R. was registered, and obtained an order for the maintenance of status quo; that no demarcation of the land has ever been carried out; and that the F.I.R. was an attempt to secure through the police what could only be obtained through the civil court. He submitted that an acquittal carries a double presumption of innocence and that no ground for interference is made out.

8. Arguments have been heard, and the record has been examined with the assistance of learned counsels, including the record of the learned trial court and the documents brought on the file of this appeal through C.M. No.40 of 2024.

9. The appeal requires consideration of the scope of section 249-A of the Code, the standard governing appellate scrutiny of an acquittal under that provision, and the ingredients of the offences alleged against respondent No.1.

10. The distinction between an acquittal after a full trial and an acquittal under section 249-A of the Code is material to the present appeal. Although respondent No.1 continues to enjoy the presumption of innocence, the impugned order must be examined by reference to the conditions governing

Islamabad High Court

the statutory power actually exercised. The august Supreme Court laid down the governing principle in ***Ghulam Sikandar and another v. Mamaraz Khan and others*** **(PLD 1985 SC 11)**, holding that an order of acquittal is not to be interfered with merely because, upon reappraisal, the appellate court would have reached a different conclusion, so long as the conclusion of the trial court was one reasonably possible upon the material before it. Interference is justified only where the reasoning is perverse, arbitrary or wholly unreasonable, or where the acquittal proceeds upon a misreading or non-reading of material resulting in a miscarriage of justice. In ***The State v. Abdul Khaliq and others*** (**PLD 2011 SC 554)** the Hon'ble Supreme Court reaffirmed that, upon an acquittal, the presumption of innocence stands doubled, that courts must be slow to interfere with it, and that a heavy burden lies upon the party challenging it to displace the presumption the accused has earned. These general principles concerning acquittal must, however, be read with the specific rule governing orders under section 249-A, discussed below.

11. In ***The State through Advocate-General Sindh v. Raja Abdul Rehman*** **(2005 SCMR 1544)**, the Hon'ble Supreme Court distinguished an acquittal under sections 249-A or 265-K from an acquittal following a full trial. Such an order does not attract the same protection based upon double innocence. The question here is whether the material before the learned trial court justified its conclusion that the charge was groundless or that there was no probability of conviction. Section 249-A of the Code reads:

> *"249-A. Power of Magistrate to acquit accused at any stage.- Nothing in this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case if, after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence."*

Islamabad High Court

12. Section 249-A permits a Magistrate to acquit an accused at any stage after hearing the prosecutor and the accused and recording reasons, provided that the charge is groundless or there is no probability of conviction. The stage of proceedings does not itself bar exercise of the power; its statutory conditions must nevertheless be satisfied. The decisions in ***Bashir Ahmed v. Zafar-ul-Islam and others*** **(PLD 2004 SC 298)** and ***The State through Advocate-General Sindh v. Raja Abdul Rehman*** **(2005 SCMR 1544)** must be read as a whole. The availability of the power at any stage does not justify premature determination of disputed facts which require evidence. The power must be exercised cautiously on a reasoned assessment of the relevant material. Where the prosecution case raises material factual questions requiring evidence, the court should not resolve them against the prosecution merely by accepting the defence explanation before the witnesses are examined.

13. The framing of a charge does not, by itself, preclude a subsequent acquittal under section 249-A. Equally, the words "at any stage" do not dispense with the obligation to demonstrate, from the material on record, why the statutory conditions for acquittal are satisfied. The objection based solely on the framing of the charge is therefore untenable, but the propriety of the acquittal remains to be examined.

14. The revenue report forming part of the supplementary challan was available for consideration under section 249-A. Certified copies of civil proceedings could likewise establish the existence and procedural status of those proceedings. Their availability did not, however, establish the truth of disputed assertions in the civil pleadings or permit the defence claim of possession to be accepted without examining the contrary prosecution material.

15. Criminal trespass, which section 447 of the PPC punishes, is defined in section 441 in these terms:

Islamabad High Court

> *"441. Criminal trespass.- Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass'."*

16. The offence is complete only when the property entered is "in the possession of another", and the entry is made with one of the intentions the section names. The offence is directed against the invasion of possession, not the infringement of title. A criminal court trying a charge of trespass does not decide who owns the land; it decides whether the complainant was in possession of it when the accused entered, and whether the accused entered with the intention of committing an offence or of intimidating, insulting or annoying the person in possession.

17. A bona fide claim of right may be relevant to the intention required by section 441, but its mere assertion is not conclusive. The intention accompanying the entry must be assessed from the surrounding circumstances, including the alleged interference with possession and damage to property. The distinction between knowledge that annoyance is likely and an intention to cause annoyance is discussed in ***Mathri v. State of Punjab*** **(AIR 1964 SC 986)**, an Indian authority of persuasive value only. A claim of ownership does not, without more, exclude an intention to commit an offence.

18. The material question is whether the particular plot was in the possession of the appellant or his father when the alleged entry occurred. The absence of formal partition or demarcation does not, by itself, establish that no person exercised factual control over an identifiable portion. Nor does ownership of land in the same revenue estate necessarily establish co-ownership of the disputed khasra. The alleged boundary wall, lock and prior

Islamabad High Court

use of the plot must therefore be considered with the relevant revenue record and other prosecution material.

19. Section 425 of the PPC requires destruction of, or an injurious change to, property accompanied by an intention to cause, or knowledge of the likelihood of causing, wrongful loss or damage. Its explanations make clear that ownership is not decisive: the affected property may belong to the accused alone or jointly with others. A claim of title therefore does not, by itself, exclude mischief; the alleged act and the accompanying intention or knowledge require separate examination.

20. The principle enunciated in ***Nur Elahi v. The State*** **(PLD 1966 SC 708)** and ***Haji Sardar Khalid Saleem v. Muhammad Ashraf and others*** **(2006 SCMR 1192)** is that civil and criminal proceedings may coexist where the facts disclose both civil rights and criminal liability. A civil dispute does not itself establish an offence, but neither does it bar prosecution. A criminal court may examine possession, entry, intention and damage for deciding the charge without finally determining title or partitioning the land.

21. With these principles in view, the record may now be examined. The F.I.R. alleges prior possession through a walled and locked plot and its subsequent interference by the breaking and replacement of the lock. The appellant's absence from the plot for several months does not necessarily establish abandonment of possession. Nor is his failure personally to witness the entry conclusive, since the allegation may be supported by other witnesses or circumstantial material. Whether the requisite entry and intention can be established must be assessed from the prosecution case as a whole. The revenue report dated 21.07.2022, as described above, records the appellant's father as a purchaser in Khasra No.2039 and respondent No.1 as a purchaser in Khasra No.2021 and Khasras Nos.2023, 2024, 2025, 2040 and 2042. These different khasra numbers require examination before treating the parties as co-sharers in the disputed plot. The absence of

Islamabad High Court

demarcation or of an express finding of unlawful occupation in that report does not itself negate the allegation of interference with possession. The report dated 27.10.2022, specifically relied upon by learned counsel for the appellant, also requires consideration. Demarcation may assist in identifying the disputed parcel, but its absence cannot substitute for an assessment of the material concerning prior possession and the alleged entry. The fact that both parties own land in the same revenue estate is insufficient, by itself, to establish that respondent No.1 was entitled to occupy the particular plot. These matters require examination on the relevant record rather than an assumption that the controversy is exclusively civil.

22. The date 06.06.2022 is stated in the F.I.R. as the date on which the appellant discovered the alleged interference; it should not automatically be treated as the proved date of entry. The civil suit was instituted on 28.07.2022, after that discovery but before registration of the F.I.R. on 22.08.2022. Any assessment of delay must also address the intervening inquiry, the revenue report dated 21.07.2022 and the death of the appellant's father on 30.07.2022. The later institution of the suit and the status quo order do not retrospectively establish a lawful entry or conclusively demonstrate mala fides in the prosecution. The asserted police direction likewise requires verification from the inquiry record.

23. The allegation of a broken lock in the F.I.R. and that of demolished boundary walls in the charge must be examined against the investigation material and the evidence proposed by the prosecution. Their difference requires explanation, but does not, without that examination, establish that no offence is disclosed. The nature and value of the alleged damage are relevant to section 427; the claim of ownership is not, by itself, an answer to the intention or knowledge required by section 425. The statements attributed to Ghazanfar Abbas and Aftab Ahmad must be examined for what they say about possession, entry, damage and the identity of the person

Islamabad High Court

responsible. Their potential relevance cannot be rejected merely because they do not determine revenue boundaries. Before concluding that the prosecution has no probability of securing a conviction, the court must address the material substance of those statements.

24. The civil suit had been dismissed for non-prosecution on 03.09.2022 and, according to the chronology set out above, had not been restored when the impugned order was passed on 05.12.2023. A pending restoration application did not itself restore the suit, and subsequent proceedings could not retrospectively make the description of it as pending accurate. The significance of this error depends upon the reliance placed on the supposed pendency of the suit in granting acquittal. It cannot be dismissed as immaterial without examining whether the remaining reasons independently satisfy section 249-A.

25. The stated pendency of a complaint under the Illegal Dispossession Act, 2005 does not determine the present appeal. No finding is required here on its maintainability or merits. That complaint must be considered by the competent court under the applicable law, independently of any determination necessary for deciding the present appeal.

26. For the foregoing reasons, the impugned order cannot be sustained merely by treating the dispute as civil or by extending to it the same protection as an acquittal after a full trial. The disputed questions of possession, entry, intention and damage require determination on evidence. Accordingly, the appeal is **allowed**, the order dated 05.12.2023 is **set aside**, and the case is **remanded** to the learned trial court to proceed from the stage at which it stood before the acquittal and decide it in accordance with law after affording the parties an opportunity of hearing. Nothing stated herein shall be construed as a finding of guilt or as determining the parties' title or the merits of the proceedings under the Illegal Dispossession Act, 2005.

Islamabad High Court

(AYYAZ SHAUKAT)
JUDGE

Saeed.

Islamabad High Court