

## **HIGH COURT OF AZAD JAMMU AND KASHMIR**



Criminal Appeal No.92/2025;  
Date of Institution 16.10.2025;  
Date of Hearing 11.02.2026;  
Date of Decision 13.02.2026.

1. Mushtaq Hussain;
2. Ishtiaq Hussain;
3. Akhlaq Ahmed sons of Muhammad Hussain, R/o village Sariyan Tehsil & District Muzaffarabad.

.....Appellants

### **VERSUS**

1. Additional Sessions Judge Muzaffarabad;
2. Muhammad Suleman S/o Amirullah, R/o Morbutt Tehsil & District Muzaffarabad.

.... Respondents

.....  
Criminal Appeal No.93/2025;  
Date of Institution 16.10.2025;

Muhammad Suleman S/o Amirullah, R/o village Morbutt Tehsil & District Muzaffarabad.

.....Appellant

### **VERSUS**

1. Mushtaq Hussain;
2. Ishtiaq Hussain;
3. Akhlaq Ahmed sons of Muhammad Hussain, residents of Sariyan Tehsil & District Muzaffarabad.

.... Respondents

### **CRIMINAL APPEALS**

**Before:- Justice Chaudhary Khalid Rasheed, J.**

**APPEARANCES:**

Mr. Abdul Qadeer Awan, Advocate for the appellant/respondent Muhammad Suleman.

Mr. Bashir Ahmed Mughal, Advocate for the respondents/appellants Ghulam Hussain etc.

**VERDICT:**

- (i) Appeal No.93/2025 is accepted.
- (ii) Appeal No.92/2025 is sacked.

**JUDGMENT:****FOREWORD:**

The captioned appeals have been preferred against the judgment dated 17.09.2025 passed by learned Additional Sessions Judge Muzaffarabad, whereby, complaint filed by Muhammad Suleman under section 492(B) and 492(C)-APC has been dropped.

Precise facts forming background of the instant appeals are, Muhammad Suleman appellant in appeal No.93/2025 filed a complaint under section 492(B & C)-APC against Ghulam Hussain and others in the Court of Sessions Judge Muzaffarabad which was entrusted to Additional Sessions Judge Muzaffarabad wherein it was pleaded that he is the owner of land comprising survey No.328/195 measuring 18 kanals & 10 marlas situated in village Balak Pana Tehsil & District Muzaffarabad in the light of decree dated 19.12.2016. It was further alleged that respondents are owners in possession of land comprising survey No.329/129 measuring 12 kanals in pursuance of mutation No.148. It was contended that the land purchased by the respondents is adjacent to the land owned by the complainant and in

garb of their adjacent land they have forcibly occupied 3 kanals of land of the complainant comprising survey No.328/195 min in 2021, hence requested that the possession of the land may be handed over to the complainant and the respondents may be proceeded and awarded sentence under law.

Respondents filed objections with a stance that they are owners in possession of 12 kanals of land purchased by them in the year 2009, hence the complaint being frivolous is liable to be sacked. The learned Court below vide order dated 02.12.2024 appointed concerned SHO as Inquiry Officer and ordered to submit report after investigation. After submission of report by SHO, Tehsildar Muzaffarabad was ordered to hand over the possession of one kanal of land to the complainant in presence of the parties which was complied with. On 05.03.2025 the statements of the accused under section 265-D Cr.P.C. were recorded who pleaded not guilty, whereupon the prosecution was required to lead evidence in order to prove the guilt of the accused. Upon completion of prosecution evidence, the statements of accused persons recorded under section 342 Cr.P.C. on 23.08.2025. They again claimed innocence and opted neither to produce evidence in defence nor to record their statements on oath under section 340(2) Cr.P.C. After hearing the arguments pro and contra the learned Court below dismissed the complaint for want

of proof through its impugned order dated 17.09.2025, hence the captioned appeals.

**STANCE OF THE COMPLAINANT/APPELLANT:**

The learned counsel for the complainant/appellant vehemently argued that the complainant by producing convincing and trustworthy evidence proved his version which is also established from the court proceedings that the respondents forcibly occupied the land owned by the complainant without having any lawful authority to do so but the Court below at one hand delivered possession of one kanal of land to the complainant from respondents but on the other hand anomalously dismissed the complainant by declaring that the complainant could not prove the allegation, thus the impugned judgment is liable to show the doors as being not sustainable and the accused/respondents are entail to be convicted by awarded maximum sentence as per the requirement of the relevant law.

**REFUTATION OF THE RESPONDENTS:**

The learned counsel for the respondents/appellants controverted with rigour that as the complainant miserably failed to substantiate that the possession was forcibly snatched by the respondents, hence the complaint has accurately been sent away by the Court below but has not reversed the proceedings regarding delivery of possession, thus the impugned judgment is liable to be

modified and the proceedings regarding delivery of possession are also liable to be quashed.

I have heard the learned counsel for the parties, gone through the record of the case with utmost care and caution.

**COURT OBSERVATIONS AND RELEVANT LAW:**

Chapter XVI-A Cr.P.C. and Chapter XIX-A APC have been inserted with a view to “curb the activities of the property grabbers”, to nip the evil in the bud, and in order to achieve the said object an expeditious, strict procedure was laid down with a purpose to discourage the pursuits of illegitimate dispossessing in order to restore the proprietary confidence of the land owners within the minimum possible time with an intention to discourage the grabbers by awarding deterrent punishments. In Pakistan Illegal Dispossession Act, 2005 was enacted for the same purpose by considering the requirement of the time to discourage the property grabbing by providing the state subjects an environment to enjoy their ownership and occupancy rights sine any hindrance, the said chapters were inserted in the Code of Criminal Procedure and Azad Penal Code where the forum of the trial Court was specified to be the Court of sessions and harsh punishment of imprisonment extendable up to 10 years with fine with an additional provision of compensation to the complainant under section 544-A Cr.P.C. was also placed to achieve the very purpose of the said enactment.

The phraseology mentioned in Section 3(1) of the Illegal Dispossession Act, 2005 has been used in section 492(B) APC without change of even a single word. Under section 203(D), Cr.P.C. a lawful owner or possessor may file a complaint before the Court of Sessions in respect of the offences under chapter XIX-A of the APC. On filing such complaint the Court in exercise of the powers conferred upon it under section 203-F Cr.P.C. may direct the concerned SHO to investigate and submit report to the Court within a period of fifteen days which may be extended up to thirty days for sufficient reasons. Under the said provision of law the Court may also direct a Magistrate or a Revenue Officer to make inquiry and submit its report within a specified period which shall be construed as evidence in the case.

In the instant case, the complainant levelled a blatant allegation against the respondents that they are in illegal possession of his 3 kanals of land. The Court directed the concerned SHO to investigate the matter and submit his report. SHO Police Station Saddar Muzaffarabad presented his report on 27.12.2024 that the accused persons are in possession of one kanal of land in excess of their purchased land and possession of complainant is over 17 kanals 10 marlas with the decrease of one kanal of his purchased land. The report of concerned Patwari is also appended with the file of trial Court as Exh.PE with a same stance. After the report of concerned SHO and revenue officials, respondent Ghulam Hussain got recorded his

statement before the Court on 07.01.2025 by showed his willingness to vacate his illegal possession and to deliver possession of one kanal land to the complainant, whereupon the Court below directed Tehsildar Muzaffarabad to hand over the possession of the land to the complainant in presence of the respondents which was complied with on 20.02.2025.

It is an admitted position that the complainant is the owner of the land comprising survey No. 328/195 measuring 18 kanals and 10 marlas of land in the light of decree of the Civil Court dated 19.12.2016. He alleged in his complaint that respondents forcibly occupied his 3 kanals of land in 2021 as they have carried away cut grass of the complainant and are in possession of the same. As per the prime refutation taken by the respondents, they have not forcibly dispossessed the complainant is concerned a plain reading of section 492-B APC makes it obvious that if a person enters into or upon any property with the intention to dispossess, grab even to control or occupy the same without having any lawful authority to do so be punished with imprisonment and fine, hence, forceful dispossession of lawful owners or occupant is not the sole requirement or ground for conviction under the said law rather only entrance into someone property with an intention to dispossess, grab, control or occupy it from the real owner or even illegal occupant of such property is sufficient to constitute the supra mentioned offence. Keeping in view

of the phraseology used in Chapter XVI-A Cr.P.C., XIX-A APC and the precedents of the superior Courts of Pakistan while interpreting the provisions of Illegal Dispossession Act, 2005 the ingredients for conviction of an accused under section 492(B)-APC are as under:

- (i) that the accused had entered into or upon any property without any lawful authority to enter into or upon that property;
- (ii) that the intention of accused was to dispossess, grab, control or occupy that property from owner or occupier of such property.

Reliance in this regard may be placed on 2017 YLR Note 201, PLD 2007 Supreme Court 423 and PLD 2007 Lah. 231.

It is also pertinent to mark that under section 492(B)-APC, any person who enters into or upon any property with an intention to dispossess or grab or control or occupy from a lawful owner or possessor is also liable to be sentenced under the said law. The meaning of word 'control' used as verb are "to exercise restraining or directing influence over. To regulate; restrain; dominate; curb; to hold from action; overpower; counteract; govern."

The meanings of control as per Rafiq's Law Dictionary Fourth Edition are "to act of restricting, limiting, or managing and power to check or restrain and management", therefore, if a person enters into or upon a property with an intention to control, occupy, dispossess or grab the same is liable to be punished under section 492-B APC irrespective of the fact that he forcibly dispossessed the lawful owner/occupant or not? In PLD 2007 Peshawar 123 it has been

held that a group of persons who took the illegal possession of property belonging to the sleeping owners or dormant persons also comes within the ambit of property grabbing, therefore, for conviction under section 492-B APC the complainant has to establish that the person who has taken the possession was not having a title thereto and he has taken over the property without due process of law.

The Supreme Court of Pakistan in PLD 2007 Supreme Court 423 while interpreting the provisions of section 3 of Illegal Dispossession Act, 2005 observed that expression "Grab, control or occupy" cannot be restricted to the illegal occupants who entered in the premises subsequent to the promulgation of the Act rather all cases of illegal and unauthorized occupants would be subject to the Act, except the cases which were pending adjudication before other forums."

The observations recorded by the Court below that it has not been established from the evidence/record that the respondents forcibly dispossessed the complainant, hence cannot be convicted carries no water to hold because as per report of concerned Patwari dated 23.11.2022 available with the file of trial Court as Exh.PO the complainant was found to be in possession of 15 kanals & 10 marlas of land with the shortage of 3 kanals of land. It is also established from the oral evidence that during the pendency of the complaint the respondents handed over 2 kanals of land to the complainant and rest of

one kanal of land was handed over to the complainant by the Court order during the said proceedings, thus it has amply been established from the record that the respondents controlled and occupied the land of complainant sine any lawful authority. It is also flagrantly visible from the statements of Muhammad Nawaz and Muhammad Irshad that after the report of Patwari in the year 2022 the complainant made several requests to the accused persons for handing over possession of the disputed land to him and also convened multiple meetings of the elders but respondents simply denied to deliver possession of the said occupied land to the complainant which is a sufficient proof of the fact that respondents had intentionally controlled and grabbed the property of the complainant. Muhammad Suleman complainant also recorded his statement on 13.08.2025 wherein he fully supported the contents of the complaint. He also clarified that after institution of the complaint, respondents have left the possession of 2 kanals of land but continued their possession to the extent of one kanal of land. The accused respondents also appeared before this Court and got recorded their statements on 11.02.2026 that till date they are in possession of one kanal of land. As per record of the Court below the possession of one kanal of land was delivered to the complainant in pursuance of the Court order dated 07.01.2025 however, according to the stance of the complainant respondents have again occupied one kanal of land after

delivery of possession by the Court order, which fact has been endorsed by the accused respondents in their statements recorded by this Court which is also a daring and desperate act that they have paid no heed to the Court order rather again took possession of the land which was handed over to the complainant by the Court orders, hence deserves no leniency, thus it can safely be held that the complainant has established the guilt of the accused persons to the hilt through convincing, trustworthy and confidence inspiring documentary as well as oral evidence that respondents intentionally grabbed and controlled his land and despite repeated requests denied to hand over the possession of the land to the complainant, therefore they are liable to be convicted under section 492(B)-APC.

The argument advanced by the learned counsel for the accused respondents that neither SHO nor Tehsildar went on spot rather prepared reports without spot inspection is immaterial when the fact of illegal possession has been accepted by the respondents, hence being as admitted facts need not to be proved under Article 113 of Qanoon-e-Shahadat Order, 1984 as held in 2022 SCR 476, rather it strengthened and reinforced the allegation of the complainant.

So far as the offence under section 492(C)-APC is concerned, the complainant failed to establish that respondents snatched possession of the land forcibly rather a plain reading of complaint of the complainant reveals that the possession was not forcibly snatched by

the respondents rather they grabbed, controlled and occupied the same despite the knowledge that the complainant is the lawful owner of the land, hence the ingredients of section 492(C)-APC have not been fulfilled.

**DISPOSAL:**

The sum and substance of the above discussion is, the appeal filed by complainant Muhammad Suleman is hereby accepted, the accused/respondents are convicted under section 492(B)-APC by awarded 5 years simple imprisonment (each) with a fine of Rs.10,00,000/-under section 544(A) Cr.P.C. The counter appeal filed by accused/respondents is hereby dropped as having no essence in it. The Deputy Commissioner Muzaffarabad shall take necessary steps for handing over the possession of remaining one kanal of land to the complainant occupied by the accused/respondents.

**Muzaffarabad;**  
**13.02.2026.**

**JUSTICE**

Approved for reporting.

**JUSTICE**