

Stereo. HCJDA 38
JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Misc. No.51580/M/2022

Muhammad Akram

Vs.

The State etc.

JUDGMENT

Dates of hearing	18.01.2023 & 27.02.2023
For the Petitioner:	Mr. Shahid Azeem, Advocate.
For the State:	Rana Tasawar Ali Khan, Deputy Prosecutor General, with Wali Muhammad/SI, and Zulfiqar Ahmad Butt, Motor Registering Authority-VI.
For Respondent No.4:	Mr. Shahid Ali Shakir, Advocate.

Tariq Saleem Sheikh, J. – On 4.6.2022, vide Rapt No.2/5, Shafqat Ali/SI of Police Station took into custody Toyota Corolla GLI Car No.LWP-0507, Engine No.X443887, Chasis No.NZE-1206038938 (the “Car”) under section 550 Cr.P.C. from Hassan Raza, the son of Respondent No.4. The Petitioner and Respondent No.4 filed two separate applications before the Judicial Magistrate, Jaranwala, for custody (*superdari*) of the Car. The Judicial Magistrate dismissed the Petitioner’s application and allowed that of Respondent No.4 by order dated 7.6.2022. The Petitioner filed a revision petition thereagainst in the Sessions Court, Jaranwala, which the Additional Sessions Judge dismissed on 14.7.2022. The Petitioner has now assailed these orders through this petition under section 561-A Cr.P.C. before this Court.

2. The Petitioner’s counsel, Mr. Shahid Azeem, Advocate, contends that the Petitioner is the owner of the Car, and it is in his name in the record of the Motor Registering Authority (“MRA”). Respondent No.4 is an Inspector in the Punjab Police. While posted at Depalpur, he borrowed the Car from him for a short time. However, he didn’t give it

back, and when the Petitioner insisted, he used his clout and had it seized by Police Station Buchyana, Jaranwala, District Faisalabad, under section 550 Cr.P.C. The counsel states that Respondent No.4 has no right or interest in the Car, and its original papers are with the Petitioner (which he also produced before this Court during the hearing).

3. Mr. Shahid Ali Shakir, Advocate, states that Respondent No.4 purchased the Car from Muhammad Ahmad, son of Muhammad Jaffar, and he is its current lawful owner. According to Rapt No.5 dated 4.6.2022, the police seized the Car from Hassan Raza, the son of Respondent No.4. Therefore, for all legal and practical purposes, Respondent No.4 was the last possessor. The counsel strongly refutes the Petitioner's claim that he was the vehicle's owner and that he obliged Respondent No.4 and entrusted it to him for temporary use. Mr. Shakir produced the Car's original registration book, the Transfer Deed executed by Muhammad Ahmad in favour of Respondent No.4, and the certificate dated 18.7.2011 issued by the Faysal Bank Limited to support his contentions.

4. Muhammad Ahmad has also appeared before this Court in support of Respondent No.4. Although the Petitioner has not impleaded him in the petition, I have allowed him to make submissions to meet the ends of justice. He states that on 9.8.2010 he sold the Car to Respondent No.4 for Rs.950,000/-, and the same day, handed over its possession to him along with the documents mentioned in the preceding paragraph. Muhammad Ahmad further states that he swore an affidavit dated 7.6.2022 to that effect and submitted it to the Judicial Magistrate when he heard the *superdari* application. He stands by the said affidavit, which is part of the record.

5. In rebuttal, Mr. Azeem submits that when the Petitioner gave the Car to Respondent No.4, its original registration book and other papers were in the glove compartment which went with it. As regards the Transfer Deed produced by Mr. Shakir, he submits that it is collusive and an attempt to defraud the Petitioner. Muhammad Ahmad is playing in the hands of Respondent No.4. On 21.6.2022, he also applied to the MRA for the change of ownership and transfer of title of the Car in the

name of Respondent No.4. The MRA dismissed his application vide order dated 23.8.2022.

6. The Judicial Magistrate granted the Car's *superdari* to Respondent No.4 on three grounds: first, the Petitioner had failed to explain how it reached Respondent No.4; second, Respondent No.4 had the Car's original registration book and the Transfer Deed, which Muhammad Ahmad vouched; third, Respondent No.4 was the last possessor of the Car. The Additional Sessions Judge agreed on all these points while affirming his order.

Opinion

7. Section 550 Cr.P.C. empowers a police officer to seize any property that may be alleged or suspected to have been stolen or may be found under circumstances that raise suspicion that an offence has been committed. In ***Hassan Muhammad v. Nazar Hussain and others*** (2005 SCMR 1063), the parties had a dispute regarding the performance of an agreement and, resultantly, the ownership of the tractor. The Hon'ble Supreme Court of Pakistan held the civil court was the proper forum for its resolution. The police could not seize the tractor under section 550 Cr.P.C. They could exercise power under the said provision only if the property was stolen or suspected it was involved in the commission of an offence.

8. Sections 523 to 525 Cr.P.C. outline the procedure for disposal of the seized property. Section 523 directs the police to report the matter to a Magistrate immediately after the seizure. In ***Akhtar Hussain v. Station House Officer and others*** (2007 PCr.LJ 1552), this Court held that their holding of the property is illegal if they do not do so. Section 523 requires the Magistrate to deliver the seized property to the person entitled to its possession or make such other order respecting its disposal as he thinks fit. However, it is well settled that the proceedings before the Magistrate are summary. He cannot conduct a detailed inquiry because it is the realm of the civil court.

9. When the police seize a vehicle, and a person applies for its *superdari*, the Magistrate sometimes calls a report from the MRA. At

times one of the interested parties asks the MRA¹ to investigate the title of its rival and cancel his registration – as happened in the present case. Therefore, it is necessary first to define the precise nature, scope, and extent of the MRA's jurisdiction.

10. The Motor Vehicles Ordinance XIX of 1965 (the “Ordinance”) regulates motor vehicles in the province. According to section 2(23) thereof, “motor vehicle means any mechanically propelled vehicle adapted for use upon roads, whether the power of propulsion is transmitted thereto from an external or internal source, and includes a chassis to which a body has not been attached or a tractor and a trailer; a combined harvester, a rig, a fork lifter, a road roller, construction, and earth moving machinery, such as a wheel loader, a crane, an excavator, a grader, a dozer and a pipe layer, a road making and a road/sewerage cleaning plant but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner.” Section 23(1) states that no one shall drive any vehicle, and no motor vehicle owner shall cause or permit his vehicle to be driven in any place unless it is registered under Chapter III and has a registration mark displayed in the prescribed manner. Sections 24 to 28 set out the procedure for registering a motor vehicle. Section 32 speaks of the subsequent transfer of ownership. It stipulates that the transferee shall, within 30 days of the transfer of ownership of a motor vehicle registered under the Ordinance, report the transfer to the MRA within whose jurisdiction he ordinarily resides along with the prescribed documents as proof of the change of ownership and payment of the prescribed fee. The MRA shall update the records and issue a new registration certificate. Section 34 enumerates the instances under which the MRA may suspend a motor vehicle registration certificate, and section 35 lists the circumstances under which the MRA may cancel it.

¹ The expression “Registering Authority” is explained in Rule 28 of the Punjab Motor Vehicles Rules, 1969 as below:

28. Registering Authority. – (1) The Registering Authority shall be the District Officer/Excise and Taxation Officer or Deputy District Officer/Excise and Taxation Officer, as the case may be, appointed by the Government to discharge the functions and perform the duties as such, in any specified area.

(2) The area of jurisdiction of each Registering Authority shall be the area of the District.

(3) ...

11. The Hon'ble Supreme Court noted in *Amjad Ali Khan v. The State and others* (PLD 2020 SC 299) that section 27 of the Ordinance requires the production of the vehicle before the MRA (or any authority as the Government may appoint for that purpose) for physical verification so that it may satisfy itself that the particulars contained in the application are true and the vehicle complies with the requirements of Chapter VI and the Rules thereunder. It held that physical verification has many advantages and is thus equally applicable to subsequent transfers under section 32. The relevant excerpt is reproduced below:

“The importance of physical verification remains equally important in subsequent transfers, as has come to surface in the instant case, where a vehicle allegedly involved in the commission of a crime, which had been seized by the police and was a case property in a criminal case, yet it was registered in the name of the petitioner on the basis of wrongful assumption that the transferor holds an absolute legal title of the vehicle and is in lawful possession of the same. The application for registration (Form F) or the application for transfer of ownership, rests upon a fundamental assumption that the vehicle is in lawful ownership and possession of the owner of the vehicle. In order to effectively regulate the vehicles under [the Ordinance], physical verification of the vehicle at the time of registration and its subsequent registration is critical. It is also in the public interest besides advancing the purposes of [the Ordinance]. Physical verification of the vehicle also helps actualize sections 34 and 35 of [the Ordinance] dealing with suspension and cancellation of registration of the vehicle. We, therefore, hold that the requirement of section 27 regarding physical verification of the vehicle prior to registration is an essential requirement and is fully applicable to subsequent registration of vehicles under section 32 of [the Ordinance].”

12. There is no provision in the Ordinance, including sections 34 or 35, which authorizes the MRA to hear an application questioning the ownership of a motor vehicle. That is the exclusive jurisdiction of the civil court. In *Mst. Shaheen Begum v. SHO (ACLC) and others* (2005 MLD 176), the Sindh High Court considered whether the MRA could adjudicate upon and give a finding on the legality of a sale transaction and the title of a party. It ruled that the party claiming breach of contract or trust should file a civil suit. It has no remedy under sections 34 or 35 of the Ordinance. Clause (e) of section 34(1) of the Ordinance, which provides that the MRA may suspend the registration certificate of a vehicle if a substantially false statement had been made in the application for its registration, cannot be expanded to allow the MRA to assume jurisdiction. The learned Judge also referred to section 34(5)

of the Ordinance, which states that where the suspension has continued without interruption for not less than six months, the MRA may cancel the registration and the entry relating to the vehicle in its record. His Lordship held that the power of cancellation of registration is limited to the instances mentioned in section 35 of the Ordinance, namely: (a) the motor vehicle has been destroyed; (b) the motor vehicle has been rendered permanently incapable of use; or (c) the MRA is satisfied that the motor vehicle has been permanently removed from the province. The MRA cannot decide disputes relating to the title of vehicles in the garb of section 34(5).

13. Let's now turn to the case at hand. Originally, Syed Mazhar Hussain Naqvi purchased the Car from Indus Motor Company Limited. He sold it to Muhammad Ahmad, who applied to Faysal Bank Limited (the "Bank") for an "Auto Loan" and, under that arrangement, got it registered in its name on 2.9.2006. Muhammad Ahmad paid off his loan after five years, whereupon the Bank issued a No Objection Certificate dated 18.7.2011 asking the MRA to delete its name from the record. It also certified that it had no objection regarding its further sale/change of ownership. On 7.8.2019, Muhammad Ahmad got the Car transferred in his own name, and on 9.11.2019, it was registered in the Petitioner's name. Admittedly, all these documents are with the Petitioner and the MRA's record reflects that the Car belongs to him.

14. On 21.6.2022, Muhammad Ahmad filed an application before the MRA stating that in 2010 he sold the Car to Respondent No.4 for Rs.950,000/- and still had its possession. He claimed that the Petitioner had fraudulently got his name entered in the MRA's record and was wrongfully asserting title to the Car. Muhammad Ahmad further stated that he did not execute any papers in his favour, and those he submitted to the MRA were forged and did not bear his signature or thumb impression. The MRA issued notice to the Petitioner and Respondent No.4 and heard them. Subsequently, with the consent of the Petitioner and Muhammad Ahmad, the officer concerned referred T.O. Form No. 0000127971 (the Transfer Form on which the Car was transferred to the Petitioner) to the Fingerprint Bureau Punjab for an opinion. The Bureau confirmed that Muhammad Ahmad had signed the

above-mentioned T.O. Form. Accordingly, the MRA dismissed his application vide order dated 23.6.2022.

15. As adumbrated, there is no provision in the Ordinance empowering the MRA to decide any application challenging the ownership of a motor vehicle or requesting it to conduct an inquiry and suspend or cancel the registration owing to any dispute. Hence, Muhammad Ahmad's application before the MRA was not maintainable and the proceedings conducted on it were void. Consequently, I must not consider the Fingerprint Bureau's report for deciding this petition.

16. At this stage, at the cost of digression, I may allude to Articles 59, 61, 78, and 100 of Qanun-e-Shahadat, 1984. According to Article 59, when the court has to form an opinion on the point of foreign law, science, or art, or the identity of handwriting or finger impression, or the authenticity of an electronic document, the opinions of the experts in those fields are relevant facts. Article 61 deals with the situation when the court has to form an opinion about the person who wrote or signed a document. It states that the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant fact. Article 78 deals with the proof of a person's signature and handwriting. It stipulates that if a question arises whether a document was signed or written by a particular person, his signature or handwriting, as the case may be, on that document must be proved. Article 100 attaches some presumptions to thirty years old documents.

17. Article 164 of Qanun-e-Shahadat provides that courts may allow any evidence that may have become available because of modern devices and techniques. Proviso to Article 164, added in the year 2017, provides that conviction based on modern devices and techniques may be lawful. Article 164, read with Article 59, *inter alia*, allows modern forensic science to enter courts through the experts' credible and valued scientific opinions as evidence to arrive at the truth.

18. Qanun-e-Shahadat makes the expert opinion admissible, but section 510 Cr.P.C. states special rules of evidence and simplifies the

evidentiary procedure by providing that the reports of the chemical examiner, serologist, fingerprint expert, or firearm expert may be used in any trial without calling the Government Chemical Examiner, Serologist, or the other expert as a witness. The superior courts have considered section 510 Cr.P.C. in several cases. In *Sardar Ali v. Judge Special Court, Multan, and another* (1996 MLD 460), the Hon'ble Supreme Court held:

“No doubt any report of the Chemical Examiner or Assistant Chemical Examiner to Government or of the Chief Chemist of the Pakistan Security Printing Corporation Ltd. or any Serologist, fingerprint expert or firearm expert appointed by Government upon any matter or thing duly submitted to him for examination or analysis, can be used as evidence in any inquiry, trial or other proceedings under Cr.P.C. Such opinion is one of the species of evidence, and the court had been given powers to summon such person for examination. The proviso to section 510 Cr.P.C. makes it amply clear that any such opinion is of no conclusive and decisive significance and has to be assessed by the trial court.”

19. Parliament has recently amended section 510 Cr.P.C. through the Code of Criminal Procedure (Amendment) Act, 2022,² and made the report of the forensic scientist and the handwriting expert admissible *per se*.

20. While interpreting section 510 Cr.P.C. (and the above-mentioned amendment), we must, on the one hand, distinguish between the admissibility and the procedure for adducing the handwriting expert's report in evidence and, on the other hand, its probative value. The law only makes the report admissible without the expert's examination, but it is not conclusive evidence. The probative value of the report must depend upon a variety of circumstances. In *Ali Haider alias Papu v. Jameel Hussain and others* (PLD 2021 SC 362), the Hon'ble Supreme Court held:

“While the admissibility of expert opinion is already recognized under QSO [Qanun-e-Shahadat], section 510 Cr.P.C. deals with special rules of evidence and makes the evidentiary procedure simple by providing that certain reports of the chemical examiner, etc. may be used in any trial without calling the Government Chemical Examiner, serologist, fingerprint expert or firearm expert as a witness. Allowing admission of reports of the said Governmental experts in evidence without their author appearing as a witness has the objective of saving time and speeding up criminal trials. This simple procedure of admission of these reports in evidence is referred to as *per se* admissible. However, the court

² Published in the Gazette of Pakistan (Extraordinary) on November 18, 2022.

may, if it considers necessary, in the interest of justice, summon and examine the person by whom such a report has been made ... As explained above, *per se* admissibility is a procedural facility for tendering evidence extended to reports of certain experts but it does not affect or have any bearing on the admissibility of a document that is governed by the QSO, and any report or opinion of an expert in matters of science, etc., which is recognized to be relevant under Articles 59 and 164 QSO and is thus admissible under the law of evidence (QSO) ... Needless to say that under the proviso to section 510 Cr.P.C the courts can always summon and examine the expert who has prepared and authored the report.”

21. The jurisprudence developed over the years is that the handwriting expert's opinion is relevant, but it is a weak type of evidence. It should not be treated as conclusive evidence to prove a fact. Reliance is placed upon ***Syed Ali Nawaz Gardezi v. Lt.-Col. Muhammad Yusuf*** (PLD 1963 SC 51); ***Mst. Saadat Sultan and others v. Muhammad Zahur Khan and others*** (2006 SCMR 193); ***Muhammad Ishaque Qureshi v. Sajid Ali Khan and another*** (2016 SCMR 192); ***Wajeeh-ul-Hassan v. The State*** (2019 SCMR 1994); and ***Muhammad Samiullah v. The State*** (2022 SCMR 998). Albeit most of these cases were decided before the above-mentioned amendment, the principle enunciated by them fully applies to the reports of the forensic scientist and the handwriting expert under the current framework.
22. The above discussion shows that the fingerprint expert's opinion is inconclusive. Further, section 510 Cr.P.C. does not apply to the proceedings before the MRA, which is constituted under the Ordinance, a special law. These are additional reasons why I would not consider the Fingerprint Bureau's report while deciding this petition.
23. Respondent No.4 claims that he bought the Car from Muhammad Ahmad through an open Transfer Deed – which *inter alia* implies an undated document. When this Transfer Deed and Muhammad Ahmad's affidavit dated 7.6.2022 are examined together, it is found that the alleged transaction took place on 9.8.2010. According to the available documentation, Muhammad Ahmad did not have the right to sell the Car on that date because it was still in the Bank's name.
24. The matter does not end here. The Transfer Deed is not in the form prescribed under Rule 47(1) of the Punjab Motor Vehicles Rules, 1969. Further, an open Transfer Deed is not a valid title document

and does not transfer vehicle's ownership under the Ordinance. In any case, if the transferee does not submit an application to the MRA for a change of ownership of a vehicle within 30 days following the transaction, it is null and void under section 32 of the Ordinance.

25. The Petitioner is the registered owner of the Car and, for *Superdari*, the balance tilts in his favour. Hence, I **accept** this petition and set aside the impugned orders. The Area Magistrate is directed to deliver the Car to the Petitioner subject to his submission of a surety bond in the sum of Rs.10,00,000/- with one surety in the like amount.

26. This order shall not preclude Respondent No.4 from availing remedies under civil law.

(Tariq Saleem Sheikh)
Judge

Approved for reporting

Judge

Naeem