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JUDGMENT SHEET
IN THE LAHORE HIGH COURT
LAHORE
(JUDICIAL DEPARTMENT)

Cr. Misc. No.60827-M of 2022

Ahmad Ali v. Addl. Sessions Judge, etc.

Date of hearing **07.04.2023**

Petitioner by: Ch. Khurshid Anwar Bhinder,
Advocate.

Respondents/
State by:- Mr. Moeen Ali, Deputy Prosecutor
General

MUHAMMAD WAHEED KHAN, J.- The petitioner applied for superdari of vehicle Toyota Corolla (Altis) No.LEE/6781, chassis No.ZRE172R-7010054, engine No.0311019 (**vehicle in question**) before the learned Magistrate 1st Class, Chiniot, who dismissed the same vide order dated 22.06.2022. The petitioner assailed the said order by filing criminal revision petition before the learned Addl. Sessions Judge, Chiniot, which also met the same fate vide order dated 02.07.2022 and upheld the order of learned Magistrate.

2. Through this petition filed u/s 561-A Cr.P.C. the petitioner has impugned both the orders mentioned above.

3. Facts of the case are that the vehicle in question had been taken into custody by the CIA staff u/s 550 Cr.P.C. being stolen property. The petitioner filed application for superdari before the learned Magistrate 1st Class, Chiniot, stating therein that he was legitimate owner of the vehicle in question as he had purchased the

same from one Waqas Ahmad s/o Muhammad Bashir r/o District Kotli Azad Kashmir, who was serving as Colonel in Pakistan Army and it has wrongly been taken into possession by the CIA staff. During the pendency of his application, a report was requisitioned from the police by the learned Magistrate, same was submitted and the CIA police officer Nasarullah ASI-respondent No.3 also appeared before the learned Magistrate with the assertion that in fact two vehicles of same number are operating i.e. one in Chiniot and the second in Kotli Azad Kashmir and the vehicle in question is tampered and without forensic report, so the application filed by the petitioner may not be allowed. So, the learned Magistrate turned down his application in the following terms:-

“No doubt the petitioner has produced relevant documents but the same prima facie prove that he is owner of vehicle. On the other hand, the vehicle is same which was received by first owner Waqas Ahmed from company. Thus, it can only be evaluated who is rightly entitled to the vehicle when allegations of tampering, cut and weld are sort out. Thus this is only possible when the vehicle is transferred to the Punjab Forensic Science Agency, Lahore. The concerned Laboratory has capability to provide expert opinion about the tampering, cut and weld. Thus, until and unless the aforesaid report is received, the allegations of police cannot be decided out and vehicle cannot be handed over to the petitioner. The Incharge CIA is directed to transmit immediately the vehicle to the PFSA, Lahore for its test and not to misuse the vehicle. In case of misuse the penal action will be taken against the concerned CIA Incharge Nasar Ullah ASI. With these observations, the petition in hand is hereby dismissed.”

The petitioner has directed a Criminal Revision petition against the aforesaid order dated 22.06.2022 passed by the learned Magistrate 1st Class, Chiniot before the learned Addl. Sessions Judge, Chiniot, who vide order dated 02.07.2022 dismissed the same with the observation that the Court cannot restrain the police for

examining the chassis number about its tampering with or refitted from concerned laboratory and in this respect order of the learned Magistrate is in accordance with law. Hence, this petition.

4. I have heard learned counsel for the petitioner, learned Law Officer and perused the available record with their assistance.

5. The crux of arguments of learned counsel for the petitioner is that in absence of counter claimant, the petitioner is eligible to get the vehicle in question on superdari, irrespective of the fact that the same has been declared by the Punjab Forensic Science Agency (PFSA) as tampered. In support of his assertion, he has relied upon the ratio decidendi laid down by this Court in cases of “Mst. AISHA MAI v. EXCISE AND TAXATION OFFICER, BAHAWALPUR and 2 others” (2001 YLR 2091), “Haji RAB NAWAZ v. THE STATE” (2009 P Cr. L J 945), MUHAMMAD SHAHID v. THE STATE (2007 P Cr. L J 1168) and a judgment rendered by Peshawar High Court in case of “MAHBOOB KHAN v. THE STATE” (2003 YLR 791). In rebuttal, learned Law Officer while seeking guidelines issued by the august Supreme Court of Pakistan in case titled “Government of Khyber Pakhtunkhwa through Secretary Excise and Taxation Department, Civil Secretariat, Peshawar and others v. Sarfraz Khan and another” (2020 SCMR 1410), Ch. MAQBOOL AHMED v. CUSTOMS, FEDERAL EXCISE AND SALES TAX, APPELLATE TRIBUNAL and 3 others” (2009 SCMR 226) and judgments passed by the Peshawar High Court in cases of “Muhammad Zada v. The state” (2021 YLR 1415) and SULTAN MUHAMMAD v. COLLECTOR CUSTOMS and another” (2015 PTD 570) submits that the petitioner is

not eligible to have custody of vehicle in question having a tampered chassis frame.

6. In case of “Government of Khyber Pakhtunkhwa” referred supra, the apex Court has held that section 33 of the Provincial Motor Vehicles Ordinance, 1965 states that any alteration effected in the vehicle is required to be reported within 14 days to the authority in whose jurisdiction the owner resides and the authority is required to issue a certificate of registration of the subject vehicle to the concerned authority where such alteration has to be entered into. The question as to welding and refilled old chassis plate of the same vehicle amounts to altering of the original chassis number came up for consideration. The learned Bench made the following observation regarding this situation;-

vi) *“Tampering” of chassis number of the vehicle, include any alteration of the original chassis number of the vehicle, whether manual or otherwise OR cutting a piece of the frame and re-welding another piece thereon OR chassis number filled with welding material and then re-stamped.*

(vii)

(viii) *Tampering of chassis number as a result of an accident of the vehicle could only be a valid ground, if the same was reported to and confirmed by the Motor Vehicle Authorities under section 33 of the Motor Vehicle Ordinance, 1965.*

.....
Presenting documentation, relating to the said "tampered" vehicle from the Motor Vehicle Authority, without specific approval for the alteration in the chassis of engine number, as envisaged under section 33 of the Motor Vehicle Ordinance, 1965 ("Ordinance") would be of no legal avail.

Moreover, allowing a vehicle, having "tampered" chassis number, even with registration book from the Motor Vehicle Authority, would surely offend and abuse the provisions of the Act/Ordinance and the Policy

of the Federal Government reflected in Circular No. 10(1)/AS/2004 dated 11.12.2017 read with S.R.O. No. 568(1)/2008, dated 11.6.2008."

Similar observation has been rendered in the judgment of "Ch. Maqbool Ahmad" referred supra.

7. Since there is no denial of the fact that vehicle in question in this case was found to be tampered by the Punjab Forensic Science Agency (PFSA) and learned counsel for the petitioner also did not dispute this factum. The photocopy of report dated 15.08.2022 tendered by the above said agency is annexed with this petition. On going through the contents of the same, I have noticed that while giving the result of vehicle in question, the said agency has made following observation in its report:-

Details Of Results Based On Test(S) Performed:

- Chasis number before examination ZRE 172R 7010054
- Chasis number after examination ???????????????????.
- The Chasis number was found to be grinded and self punched
- Engine number before examination Q311019
- Engine Number after examination ???????????????
- The engine number was found to be grinded and self punched

Details of conclusion based on test(s) performed:

- The chasis number "ZRE 172R-7010054" was found to be bogus and genuine chasis number could not be restored
- The engine number "Q311019" was found to be bogus and genuine engine number could not be restored.

NOTE:

- The results in this report relate only to the item(s) as received and tested
- means the number was found to be tampered but original number did not appear

8. So in the light of above discussion, I am of the view that if the petitioner has purchased the vehicle in question without taking due care and in compliance with the requirements of law, he cannot be claimed to be a

bona fide purchaser and at the maximum, he can claim damages from the person from whom he had purchased the same. As far as the judgments referred by learned counsel for the petitioner are concerned, I have gone through the same and noticed that facts and circumstances of those cases are different from the case in hand. Even otherwise, in case of “Government of Khyber Pakhtunkhwa” referred supra originally High Court had set aside the seizure order and directed the department to hand over the vehicle to the owner but the said order was challenged by the government before the august Supreme Court of Pakistan and vide the above said judgment, it was allowed and order of High Court was set aside by observing that the owner was not entitled to retain or get superdari of the vehicle which has been declared as having been with tampered chassis number.

9. Under the circumstances, the instant petition being devoid of any merits is hereby **dismissed**.

(MUHAMMAD WAHEED KHAN)
JUDGE

This judgment has been reserved on 07.04.2023 and announced in open Court today i.e. 17.04.2023

JUDGE

Approved for reporting