

[Balochistan]

Before Iqbal Ahmed Kasi, J

MUHAMMAD AJMAL---Petitioner

Versus

The STATE---Respondent

Criminal Revision No. (T)11 of 2024, decided on 14th November, 2024.

Criminal Procedure Code (V of 1898)---

---S. 516-A---Penal Code (XLV of 1860), Ss.320, 279, 337-G & 427---Superdari of vehicle---Scope---Complaint was filed by the police against the accused-petitioner with the allegation that due to negligent and careless driving of accused, the vehicle in question hit a car, which resulted into death of two ladies and injuries to three other persons---Consequently, the FIR was lodged and the vehicle in question was taken into custody by the police---Application filed by the petitioner for release of vehicle on superdari was dismissed---Validity---Admittedly, the vehicle in question detained in the case was not the subject matter of any offence---Admitted feature of the case was that the vehicle in question actually was owned by a company, which was being driven by the petitioner/accused, thus, the company had nothing to do with the commission of the offence and it could not be held liable for what its driver had done---In such a situation, the Court was bound to release the vehicle to its respective owner for proper custody---Admittedly, the vehicle in question was taken into custody by the police from the possession of the petitioner, as such, he was last possessor of the vehicle in question and there was no rival claimant for superdari of the same---In case, there is no rival claimant for superdari of the vehicle then the vehicle should ordinary be given on superdari to the person from whom it is taken into possession by the police---Petitioner was the only person, who had claimed superdari of the vehicle in question, as it was admittedly taken into possession by the police from his custody and direct control---Revision petition was allowed and the vehicle in question was ordered to be released on superdari to the petitioner.

Miss Zarina Khan v. The State 1970 PCr.LJ 1215; Ghulam Abbas v. Muhammad Ilyas and another 1974 PCr.LJ Note 53 at page 34 and Haji Rab Nawaz v. The State 1988 PCr.LJ 1353 rel.

Rehmatullah Bareech for Petitioner.

Ms. Amna Hashmi, Deputy Public Prosecutor for the State.

Date of hearing: 12th November, 2024.

JUDGMENT

IQBAL AHMED KASI, J.---Through this petition, the petitioner Muhammad Ajmal son of Muhammad Ramzan, has challenged the validity of the order dated 22.08.2024 ("the impugned order") passed by the learned Sessions Judge, Gwadar ("the trial Court") whereby, the application filed by the petitioner under Section 516-A, Cr.P.C. for release of vehicle i.e. Gas Bowser Trailor, bearing Registration No. TME-568, Engine No.LTIAI5H30162, Chassis No.LEZADIEC8HF-001525 ('the vehicle in question') was dismissed.

2. Briefly stated facts leading to file the instant petition are that on the report of complainant, ASI, Altaf Hussain, FIR No.05 of 2024, dated 27.03.2024, under Sections 320, 279, 337-G, 427, P.P.C., was registered with Police Station, Saddar, Pasni, District, Gwadar, with the allegations that on the fateful day at about 03:30 p.m. due to negligent and carelessness driving of accused Muhammad Ajmal, the vehicle in question hit a Corolla for

viewing purpose. Contact office for certified copy. Car, bearing Registration No.BUW-532, at Coastal Highway, near Sawad Hotel, which resulted into death of two ladies, namely, Mst. Shangraf and Shazia and injured three other persons. Consequently, the FIR was lodged and the vehicle in question was taken into custody by the Police.

3. The petitioner, after getting bail, filed an application under Section 516-A, Cr.P.C. for release of the vehicle on superdari, before the trial Court. The trial Court after hearing arguments from both sides, rejected the application vide impugned order, hence this petition.

4. Learned counsel for petitioner submits that the petitioner is last possessor of the vehicle in question; that the driver could not maintain driving control, due to which the accident occurred, thus, there was no fault on the part of the petitioner; that the owner of the vehicle is suffering financial losses due to custody of the vehicle, which condition is otherwise deteriorating day by day, as the same is parked in an open area in the Police Station; that there is no other claimant of the vehicle in question except the petitioner, therefore, the vehicle in question may be released in favour of the petitioner.

5. Learned Deputy Public Prosecutor opposed the contention of learned counsel for petitioner and stated that due to harsh and negligent driving by the petitioner, two persons have lost their precious lives; that the vehicle in question has been impounded in the offence, therefore, the petitioner is not entitled for superdari of the same; that the trial Court has rightly dismissed the application of the petitioner through impugned order, thus, the same warrants no interference by this Court.

6. I have heard the learned counsel for the parties and perused the record made available before me.

7. Section 516-A, Cr.P.C., which deals with the disposal of property pending trial provides as follows:--

"When any property regarding which any offence appears to have been committed, or which appears to have been used for commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold of otherwise disposed of:

Provided that, if the property consists of explosive substances, the Court shall not order it to be sold or handed over any person other than a Government Department or office dealing with, or to an authorized dealer in, such substances."

8. A bare reading of the above provision of law would show that the property can be detained only if it is subject-matter of an offence, or if it has been used for the commission of any offence. Admittedly, the vehicle in question detained in the instant case is not the subject-matter of any offence. As I, reached to the conclusion, the vehicle in question was detained because in the opinion of the learned Sessions Judge it was used in the commission of offence as 'weapon'. There is, however, ample authority for the proposition that in a prosecution of a driver for causing hurt, simple or grievous or death of a person, by rash or negligent driving, the vehicle cannot be said to have been used by the accused for the commission of the said offence.

9. It is another admitted feature of the case that the vehicle in question actually is owned by Multan LPG (Pvt) Ltd. ('the Company'), which was being driven by the petitioner/accused, thus, the Company has nothing to do with the commission of the offence and it cannot be held liable for what its driver had done. In such a situation the Court was bound to release the vehicles to their respective owner for 'proper custody'. If any direct authority is needed the case of "Miss Zarina Khan v. The State", reported in 1970 PCr.LJ 1215, may be cited with advantage, wherein it was held:

"In my view, the order of the learned Magistrate withholding the car from its true owner was entirely unjustified. Under section 516-A of the Criminal Procedure Code the Court has to pass order for 'proper custody' of the property regarding which an

offence has been committed or which appears to have been used for commission of any offence. The car, in this case, was owned and claimed by the petitioner who was not alleged to have done anything to advance the commission of the offence. The car may or may not have been subject to decay but the learned Magistrate entirely lost sight of the fact that by his unjustified refusal to hand over the car to the real owner, he was depriving her of her legal right to use her own property."

10. The cases of Hon'ble Supreme Court of Pakistan, titled as, "Ghulam Akbas v. Muhammad Ilyas and another" 1974 PCr.LJ Note 53 at Page 34 and "Haji Rab Nawaz v. The State" 1988, PCr.LJ 1353, are also attracted to this case. In the latter citation, the Hon'ble Supreme Court, allowed the custody of a wagon to its owner, which was allegedly used in the commission of a murder, for the following reasons:

"In any case leaving the wagon in custody of the police will not serve any purpose except reducing its utility. Moreover, it will tantamount to penalizing the applicant unnecessarily as he does not appear to be involved in the commission of the alleged offence. Therefore, there is no doubt in my mind that the order passed by the learned Sessions Court will unnecessarily cause hardship to the applicant."

11. Apart from above, as stated above, the vehicle in question originally belongs to the Company, however, the Company has issued an authority letter in favour of the petitioner enabling him to apply for release of the vehicle in question. Admittedly, the vehicle in question was taken into custody by the Police from the possession of the petitioner, as such, he is last possessor of the vehicle in question and there is no rival claimant for superdari of the same. It is settled law that in case there are no rival claimant for superdari of the vehicle then the vehicle should ordinary be given on superdari to the person from whom it was taken into possession by the Police. In the instant case, the petitioner is the only person, who has claimed superdari of the vehicle in question, as it was admittedly taken into possession by the Police from the custody and direct control of the petitioner.

12. After a careful and anxious study of the cases referred to above, I am clear in my mind that the impugned order dated 22.08.202