

## **ORDER SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

**Criminal Misc. No. 773/2019**

Mehboob Ali

Versus

The State.

**Criminal Misc. No. 69/M/2020**

Zarnosh Khan

Versus

The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	05.10.2020.	Mr. Ahmed Abdul Rafay, Advocate for petitioner Mehboob Ali. Mr. Sheryar Nawaz Malik, Advocate alongwith petitioner Zarnosh Khan. Mr. Hasnain Haider Thaheem, State Counsel. Manzoor, ASI. P.S. Margalla, Islamabad.

By way of this common order, I intend to decide both the captioned criminal miscellaneous petitions arising out of case FIR No.163, dated 03.09.2019, U/S 381-A/34 PPC, P.S. Margalla, Islamabad.

2. In CrI. Misc. No.773/2019, the petitioner Mehboob Ali has prayed for release of vehicle No. LES-2288, Toyota Hi-ace, Model 2007 on the ground that he being registered owner of subject vehicle (copy of registration book has been produced to substantiate his claim), hence, he is entitled for *superdari* of vehicle and that both the forums below have not considered this aspect and refused the application for *superdari* in

violation of settled law; that FIR though was got registered by one Ghulam Murtaza, who was purchaser of said vehicle and petitioner has sold out the vehicle to said Ghulam Murtaza when vehicle was reportedly stolen from territorial jurisdiction of P.S. Margalla, Islamabad.

3. In Crl. Misc. No.69-M/2020, learned counsel for the petitioner Zarnosh Khan contends that petitioner is also purchaser of said vehicle against the total sale consideration of Rs.26,50,000/- on installment basis and has paid an amount of Rs.5,00,000/- through agreement dated 24.03.2015, but said vehicle was stolen which was later on recovered and Mehboob Ali has snatched the said vehicle from petitioner forcibly; that said vehicle was seen by petitioner at Faisal Masjid, whereby he informed the police regarding the said vehicle but respondent No.3/Ghulam Murtaza successfully got lodged the FIR No.163, dated 03.09.2019, U/S 381-A/34 PPC, P.S. Margalla, Islamabad and petitioner has been nominated as accused in the said FIR; that cross civil suits are pending before the competent civil court qua the eligibility and entitlement of vehicle in question, as such learned trial Court as well as learned Revisional Court have not considered all these aspects and dismissed the application in mechanical fashion.

4. Arguments heard, record perused.

5. Perusal of record reveals that FIR No.163, dated 03.09.2019, U/S 381-A/34 PPC, P.S. Margalla, Islamabad

was lodged on the complaint of Ghulam Murtaza/respondent No.3 with the contention that he alongwith family came from Sara-e-Alamgir to Faisal Masjid on subject vehicle No.LES-2288, Toyota Hi-ace and same was stolen from parking area when he went to drink water from nearby water cooler. He nominated Zarnosh Khan and three unknown persons as accused in the FIR, whereby I.O got recovered the subject vehicle from said Zarnosh Khan, petitioner in Crl. Misc. No.69-M/2020. The vehicle in question was recovered on his pointation and at this stage, I.O present before the Court has confirmed that challan has been submitted in the Court against Zarnosh Khan and trial is pending before the competent court.

6. Similarly, it has not been denied by the I.O as well as by all the parties present before the court that vehicle in question is registered in the name of Mehboob Ali, petitioner in Crl. Misc. No.773/2019 and as such registration book appended with this petition confirms the stance, however, petitioner Mehboob Ali conceded that he has sold out the vehicle and same was with Ghulam Murtaza/respondent No.3 and as such petitioner Mehboob Ali has no claim except that he is registered owner. There is also no denial regarding pendency of civil suits before the Court of Mr. Zahid Tirmazi, Civil Judge (West), Islamabad.

7. Keeping in view the above divergent stance of the parties qua the vehicle in question whereby parties

have claimed the vehicle through their cross suits and even nominated accused Zarnosh Khan is also rival claimant. In this backdrop, this Court is of the view that parties have already agitated their matter before the competent civil court having jurisdiction in this regard and any decision at this stage might affect the case of either party, especially when criminal case is pending qua the stolen vehicle, therefore, it is appropriate that direction be issued to all the concerned courts including civil court as well as criminal court to adjudicate upon the matter on the basis of respective pleas and evidence of parties as all parties are claiming their rights on the basis of certain documents which could not be appreciated by this Court, which requires recording of evidence. Hence, instant criminal miscellaneous petitions are disposed of with direction to the trial Court to conclude the trial on or before 30.06.2021 and shall decide the fate of vehicle bearing No.LES-2288, Toyota Ili-ace, Model 2007 after recording of evidence. Similarly, learned Civil Court seized with the cross suits is directed to decide the suits on or before 30.06.2021. However, orders so passed by learned trial Court as well as learned Revisional Court will not effect the rights of respective parties. However, it is important to mention here that Mehboob Ali has conceded his claim in favour of Ghulam Murtaza, whose application for *superdari* of vehicle in question has already been turned down by the trial Court and as such he has not

assailed the same further, therefore, he may approach the trial Court afresh while referring the stance of Mehboob Ali, registered owner of vehicle in question, if so advised.

(MOHSIN AKHTAR KAYANI)  
JUDGE

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