

## **ORDER SHEET.**

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

**Crl. Org. No.25/2020.**

Ghulam Mujtaba

Versus

Mubashir Hussain Kazmi and others

**Crl. Org. No.06/2020.**

**IN**

**Criminal Appeal No.97/2015.**

Mushtaq Khan

Versus

Muhammad Waseem, Deputy Director Law, Department, Regional Directorate of ANF,  
Rawalpindi, etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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02.07.2020. Mr. Faisal Iqbal Khan & Mr. Shan Zeb Khan, Advocates for the  
petitioner in their respective petitions.  
Dr. Waseem Ahmed Qureshi, Special Prosecutor, ANF.  
Fayzan S.I, ANF.

Through this single, order we intend to decide above titled  
criminal originals as the same have been arisen out of the same  
order.

2. Brief facts as referred in Crl. Org. No.25/2020 are that  
applicant Ghulam Mujtaba is lawful registered owner of vehicle  
No.NK-095 Land Cruiser vide registration dated 28.11.2019  
issued by ETO, Islamabad, which has not been released by ANF  
Authorities in compliance of consolidated judgment of this Court  
passed in Crl. Appeal No.97/2015 and Criminal Revision  
No.52/2015 dated 24.10.2019, whereby direction was issued to  
release the vehicle No.NK-095 Land Cruiser to its lawful owner  
subject to verification alongwith amount of Rs.55,00,000/-  
recovered on the alleged day of occurrence from the said vehicle.

3. In CrI. Org. No.06/2020, applicant Muhstaq Khan claims that he is the owner of vehicle No.NK-095 Land Cruiser, when it was taken into custody by ANF Authorities on 10.05.2013 vide FIR No.21, dated 10.05.2013, U/S 9-C & 15 CNSA, 1997, P.S ANF, Rawalpindi, which was registered against Israr Khan, who was found involved in transportation of 5 kg Heroin recovered from the said vehicle alongwith amount of Rs.55,00,000/-. Israr Khan was convicted by Trial Court, however, acquitted by this Court vide consolidated judgment dated 24.10.2019 with direction to release the vehicle and the amount to lawful owner as such he claims that he is owner as per registration book at the time of arrest of the accused, who was using the vehicle owned by the applicant.

4. Learned Special Prosecutor, ANF contends that vehicle in question was being driven by one Israr Khan, who was transporting 5 kg Heroin alongwith amount of Rs.55,00,000/- and as a result FIR 21, dated 10.05.2013, U/S 9-C & 15 CNSA, 1997, P.S ANF, Rawalpindi and trial was conducted by Special Court (CNS) Islamabad and he was convicted, however, in appeal judgment of conviction has been set aside by this Court and direction was passed to release the vehicle and the amount to lawful owner; that vehicle in question has been transferred in the name of applicant Ghulam Mujtaba after pronouncement of judgment by this Court without physical verification in presence of the vehicle, which was in custody of ANF Authorities; that the vehicle was transferred through a process in concealed manner through Motor Registration Authority, Peshawar instead of ETO, Islamabad, which is not permissible; that both the claimants have not submitted any lawful document to justify their stance for the vehicle or the amount and as such this question can only be settled by Civil Court and no contempt is made out.

5. We have heard the arguments and perused the record.
6. Perusal of the record reveals that this Court while deciding case FIR 21, dated 10.05.2013, U/S 9-C & 15 CNSA, 1997, P.S ANF, Rawalpindi in Criminal Appeal No.97/2015 and Criminal Revision No.52/2015 passed following order:-

*“On the other hand ANF filed Criminal Revision No.52/2015 for enhancement of sentence, whereas Section 48 provides appeal against the judgment/final order and as such revision at this stage could not be converted into appeal which has specific timeline, therefore, Criminal Revision No.52/2015, filed by ANF is hereby dismissed. However, ANF authorities are directed to release the vehicle No.NK-095 Land Cruiser to its lawful owner subject to verification alongwith amount of Rs.55,00,000/- recovered on the alleged day of occurrence from the said vehicle, although appellant was not sitting in the said vehicle.”*

7. In view of above position, applicant Ghulam Mujtaba in CrI. Org. No.25/2020 and applicant Mushtaq Khan in CrI. Org. No.06/2020 have filed applications to initiate contempt of Court proceedings for release of the vehicle and the amount before this Court. Perusal of record reveals that vehicle in question has been transferred through Motor Registration Authority, Islamabad in the name of Ghulam Mujtaba being its first owner and the said vehicle was used by Israr Khan and it was alleged that the vehicle was taken on rent whereas the vehicle was with ANF Authorities since registration of the FIR in the year 2013 alongwith registration book, however, after passing of the judgment by Trial Court one of the applicant Mushtaq Khan got the same transferred in his name on 12.12.2019 from the office of Motor Registration Authority, Peshawar and filed application for release of the same. In this disputed situation, both the applicants are claiming their ownership on the basis of their own claim and as such this Court cannot adjudicate upon the matter in criminal original proceedings as it relates to disputed question which cannot be decided without recording of evidence and

scrutiny of Motor Registration record, even amount of Rs.55,00,000/- is another factor, which has not been legally justified by the applicants or by the accused Israr Khan, who has been acquitted from the case. In such type of situation when there are rival claimants to claim the vehicle and the amount, the question of lawful owner is based upon evidence, which can only be recorded by the Court of plenary jurisdiction and not by this Court in ancillary proceedings although in terms of section 32 of Motor Vehicle Ordinance it is essential duty of the Motor Registration Authority to settle the question after physical verification of the vehicle but all these questions have not been considered at the time of transfer of vehicle by Motor Registration Authority, Peshawar, which reflects some disputed position, therefore, without commenting on this transfer by the Motor Registration Authority, we have not seen defiance of judgment of this Court by ANF Authorities.

8. For the foregoing discussion, both the criminal originals do not bear merit, therefore, the same are hereby dismissed. However, the petitioners may approach Court of plenary jurisdiction to get their claim declared qua vehicle No.NK-05 Land Cruiser and amount of Rs.55,00,000/-, where-after, they may approach the concerned authorities for compliance of judgment in question.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

R.Anjam