

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Writ Petition No.1828 of 2018

Shahzad Alam
Versus
The State & others

Petitioner By: Barrister Gohar Ali Khan

State by: Mr. Zohaib Hassan Gondal, State Counsel along
with Gulzar Minhas A.S.I & Malik Siddique ASI,
Police Station Khanna, Islamabad.

Date of Hearing: 29.04.2020.

GHULAM AZAM QAMBRANI, J.:-The petitioner through the instant Writ Petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeks Superdari of the vehicle Toyota Corolla registration No.RP-9200, Chassis NZE120-6001162, Engine No.2373470, Model 2002, being lawful purchaser and owner of the same.

2. Briefly stated facts of the case are that on 11.11.2015, the petitioner lodged F.I.R No. 285 of 2015 with the Police Station Khanna with the averments that on the said date at about 11:00 AM, he went to Madina Town, where he met with one of his friend namely Waheed and stayed with him for a night. On the next day, when he came out from the house, he found missing his vehicle and thereafter, reported the matter to the police. Upon such information, F.I.R No. 285 of 2015, under Section 381-A P.P.C was registered against un-known accused persons.

3. The petitioner filed an application before the Court of learned Judicial Magistrate (West) Islamabad, for Superdari of vehicle which

was dismissed vide order dated 14.03.2018. Feeling aggrieved from the said order, the petitioner filed a Criminal Revision before the Court of learned Additional Sessions Judge (West) Islamabad, which was also dismissed vide order dated 12.04.2018. Hence, this petition.

4. Learned counsel for the petitioner contended that the petitioner is the lawful owner and last possessor of the vehicle in-question; that the petitioner parked the said vehicle near the home of his friend where he spent a night and on the next day, he found missing the said vehicle. Upon which the petitioner lodged F.I.R No. 285/2015 with Police Station, Khanna, Islamabad; that on 18.08.2017 the police was informed that the vehicle in-question has been recovered by the police of Shinkiari, District Mansehra and F.I.R No. 492, dated 18.08.2017, under Section 468/471/419/420 P.P.C has been registered. Further submitted that the vehicle in-question has been impounded by the police and the vehicle is standing in open sky, where condition of the vehicle is being deteriorated day by day and there is apprehension of its being damaged; next contended that there is no other claimant of the vehicle except the petitioner; that the Courts below have failed to consider the submissions of the petitioner while dismissing the application for Superdari of the vehicle without any legal justification.

5. Conversely, learned State counsel opposed the arguments advanced by the learned counsel for petitioner on the ground that the vehicle in question is the case property and the same has to be produced before the Court during trial. Lastly, prayed for dismissal of the petition.

6. I have heard arguments of the learned counsel for the parties and have gone through the available record with their able assistance.

7. Perusal of record reveals that on 11.11.2015 the vehicle of the petitioner was stolen from the area of Police Station Khanna, Islamabad. In this regard, he got lodged an F.I.R No. 285/2015 with the said police station. The police did its best for the search and recovery of the vehicle, but all in vain. All of a sudden, on 11.02.2018 it came into the knowledge of police of Police Station Khanna that the vehicle in-question has been impounded by the police of Shinkiari, District Mansehra and F.I.R No. 492 dated 18.08.2017 under Sections 468, 471, 419, 420 P.P.C was registered at Police Station, Shinkiari, District Mansehra. On such information, the police of P.S Khanna took the petitioner to Shinkiari where the petitioner identified his vehicle but the chassis number of the vehicle was found tampered by the accused persons. The petitioner filed an application before the learned Court of Senior Civil Judge-II (Judicial Magistrate-East, Islamabad) for release of the vehicle on Superdari. The same was dismissed vide order dated 14.03.2018. The petitioner feeling aggrieved approached the Court of learned Additional Sessions Judge-East, Islamabad by filing a revision petition against the impugned order passed by Judicial Magistrate. The same was also dismissed vide order dated 12.04.2018.

8. The petitioner prima facie is the sole owner and last possessor of the vehicle in-question, at least in absence of any rival claimant, and this fact is confirmed from the registration of F.I.R No.285/2015. On the other hand, there is no other claimant of the vehicle in-question except the petitioner. Admittedly, the vehicle in question

is parked in open sky in the vicinity of Police Station Khanna, Islamabad and there is apprehension of its being deteriorated day by day. In view of above, the petitioner cannot be refused the custody of the vehicle in-question on Superdari. Reliance in this regard is placed upon Amanat Ali Vs. Additional Sessions Judge, Lahore and 3 others (2006 YLR 1831) and Muhammad Shahid Vs. The State (2007 YLR 2660).

9. In view of above, instant petition is allowed to the extent of F.I.R No. 285/2015 registered at P.S Khanna, Islamabad and order dated 12.04.2018 passed by the learned Additional Sessions Judge-East, Islamabad & order dated 14.03.2018 passed by the learned Senior Civil Judge-cum-Judicial Magistrate, Islamabad, are set-aside. Resultantly, vehicle Toyota Corolla registration No.RP-9200, Chassis NZE120-6001162, Engine No.2373470, Model 2002, is directed to be handed over to the petitioner, if not involved in any other case, after completing all the legal formalities, subject to his furnishing surety bonds in the sum of Rs. 2,00,000/- with one surety and PR of the like amount to the satisfaction of the learned trial Court. The petitioner is directed not to change the condition or colour of the said vehicle, in any manner and to produce it before the Court as and when required.

(GHULAM AZAM QAMBRANI)
JUDGE

"Rana.M.Ift"

Announced in open Court on 30th April, 2020.

JUDGE