

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No.327-2019

Shahroom Akhtar

Vs.

Roaid Anwar etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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27.01.2020	Mr. Mohsin Khan Abbasi, Advocate for petitioner. Malik Owais Haider, State Counsel with Khalid, ASI.
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This petition/application is directed against order dated 20.04.2019, whereby revision petition filed by respondent No.1, was allowed and the custody of vehicle in question was handed over to him.

2. The facts, in brief, are that a vehicle bearing Registration No.ICT/ACX-721 is the case property in FIR No.256 dated 12.10.2017 under sections 420/34 PPC registered at P.S. Karachi Company, Islamabad. The petitioner as well as respondent No.1 applied for possession of the vehicle on superdari to the learned Judicial Magistrate. The application filed by the petitioner was allowed and one of respondent No.1 was dismissed, however, respondent No.1 filed criminal revision against the said order, which was allowed hence instant application.

3. The instant application is under section 561 Cr.P.C. and during course of arguments it was confronted to the learned counsel for the petitioner to satisfy the Court regarding maintainability of instant application. In

support of his contentions, learned counsel placed reliance on cases reported as 'Haji Sher Hassan Khan Vs. Hidayatullah and another' (1996 SCMR 1476), 'Muhammad Nawaz Vs. Additional Sessions Judge, Pakpattan and 9-others' (2017 P.Cr.LJ 1288), 'Mst. Sarwar Jan Vs. Ayub and Another' (1995 SCMR 1679), 'Shahkot Bus Service, Shahkot Vs. The State and Another' (1969 SCMR 325), 'Syed Munawwar Ali Zaidi Vs. Mst. Qaiser Jehan and Another' (PLD 1992 Supreme Court 406), 'Quresh Ali Vs. The State and others' (PLD 1993 Karachi 424) & 'Shah Jahan Alamgir Shahanshah, Advocate Vs. Haji Muhammad Sharif and others' (1989 P Cr.LJ 374). On merits, learned counsel for the petitioner submitted that since the petitioner is the owner of vehicle hence he is entitled to the possession of the same on superdari.

4. Learned counsel for respondent No.1, *inter alia*, contended that respondent No.1 purchased the vehicle and there are valid documents in his favour.

5. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

6. In light of case law reported as 'Haji Sher Hassan Khan Vs. Hidayatullah and another' (1996 SCMR 1476), the august Apex Court observed that inherent powers of the High Court are not affected by the exercise of

revisional jurisdiction by Sessions Court, hence instant petition is maintainable.

7. In so far as merits of the case are concerned, a petition for superdari of the vehicle was also filed before Hon'ble Peshawar High Court which was decided vide judgment dated 18.05.2018 passed in Cr.M.QP No.90-P/2017. In the said judgment, it was observed that petitioner is the lawful owner of the vehicle in question.

8. The revisional court, in the facts and circumstances, has failed to appreciate the question of ownership and entitlement of possession of vehicle hence it is appropriate that the matter be remanded to the said court for decision afresh.

9. In view of above, instant petition is allowed and the order dated 20.04.2019 passed by learned revisional court is set aside; consequently, revision petition filed by respondent No.1, shall be deemed to be pending before the referred court and be decided after providing opportunity to the parties to satisfy the court regarding question of ownership and entitlement of possession of vehicle on superdari.

(AAMER FAROOQ)
JUDGE

Zawar