

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT.

W.P No. 2345/2019

Mirza Adnan Shuja Taimori Vs. Additional Sessions Judge (West) and others.

Petitioner by: Rao Muhammad Sarfraz, Advocate

Respondents by: Mr. Mubaras Khan Alizai, Advocate for respondent No.5.
Ms. Ramsha Izhar, State Counsel.
Habib Ullah, S.I, P.S Golra Sharif, Islamabad

W.P No. 783/2019

Izhar Muhammad Vs. Sessions Judge Islamabad (West) and others.

Petitioner by: Mr. Mubaras Khan Alizai, Advocate

Respondents by: Rao Muhammad Sarfraz, Advocate for respondent No.3.
Ms. Ramsha Izhar, State Counsel.
Muhammad Tariq, ASI, P.S Karachi Company, Islamabad.

Date of Decision: 04.03.2020.

MOHSIN AKHTAR KAYANI, J. By way of this common judgment, I intend to decide captioned writ petitions having similar cause of action i.e. Superdari of vehicle No. B-2418, Toyota Corolla, Chassis No. NZE-1206055386, Engine No. X-527047, which is presently in possession of Mirza Adnan Shuja Taimori, who is aggrieved with the order dated 29.04.2019, passed by learned Additional Sessions Judge-V (West), Islamabad, whereby Superdari order in his favour has been set-aside and S.H.O concerned has been directed to take over the said vehicle.

2. Through the W.P No.783/2019, petitioner (Izhar Muhammad) is also claiming the vehicle in question through Superdari, however, his application for Superdari of vehicle bearing No. B-2418, Toyota Corolla, Chassis No. NZE-1206055386, Engine No. X-527047 was dismissed through the impugned order dated 30.11.2018, passed by learned

Judicial Magistrate, Section 30, Islamabad and same was upheld by the learned Sessions Judge (West), Islamabad vide order dated 07.02.2019.

3. Learned counsel for the petitioner Mirza Adnan Shuja Taimori in W.P No. 2345/2019 contends that petitioner is owner of vehicle No. B-2418, Toyota Corolla, Chassis No. NZE-1206055386, Engine No. X-527047, which was detained by the police and he filed application for Superdari of the vehicle on the ground that he had lodged F.I.R No. 175, dated 25.04.2018, U/s 381-A/411 PPC, P.S Karachi Company, Islamabad that his vehicle was stolen and during the course of investigation accused Danish Iqbal and Syed Farooq disclosed that the vehicle was tempered by them, which was recovered on their pointation and the vehicle in question was the same vehicle, which was claimed by the petitioner. He further contends that the petitioner is the registered owner of the vehicle in question and the learned Judicial Magistrate has rightly passed the order in his favour. However, learned Additional Sessions Judge-V (West), Islamabad has not appreciated the law and the facts and recalled the order of Superdari, despite the fact that the vehicle will be damaged if remain in police station.

4. Conversely, learned counsel for the petitioner Izhar Muhammad in W.P No. 783/2019 contends that vehicle in question was already on Superdari in his favour vide order dated 22.12.2016, passed by learned Judicial Magistrate-II, Nowshera, which was taken over by the police Station Akora Khattak vide Naqal Mad No. 05 dated 03.04.2017 U/s 523/550 Cr.P.C. He further contends that the vehicle was used by him, when the same was taken over by the police at Islamabad and later on it was delivered to Mirza Adnan Shuja Taimori, the rival claimant of the vehicle. He further contends that the vehicle was found cut and weld during the forensic report and F.I.R No. 286, dated 03.04.2017, U/s 420/468/471 PPC, P.S Akora Khattak, District Nowshera was registered and previously the vehicle was damaged in a bomb blast and as such he

has legal documents in his favour, which was not appreciated by the Courts below.

5. Arguments heard and record perused.

6. Perusal of record reveals that the vehicle in question has long history in different criminal cases including one of the incident alleged is of bomb blast, in which certain causalities took place and vehicle was completely destroyed, which was got repaired and later on it was allegedly detained by the Police Station Akora Khattak vide FIR No. 286, dated 03.04.2017, U/s 420/468/471, PPC, P.S Akora Khattai, District Nowshera, when the vehicle was found cut and weld as per the forensic report. However, the vehicle in question was claimed to be released by the learned Judicial Magistrate Nowshera vide order dated 19.04.2017, but surprisingly the typed order which was announced by the Court reflects the date i.e. 22.12.2016, therefore, this attested order is another glaring example of certain suspicions, which persuaded this Court not to believe on the record.

7. Even otherwise, the ownership record claimed by the petitioner in W.P No. 2345/2019 reflects that F.I.R No. 175, dated 25.04.2018, U/s 381-A/411 PPC, P.S Karachi Company, Islamabad was lodged on the complaint of Mirza Adnan Shuja Taimori, who claims to be the owner on the ground that his vehicle was stolen and same was identified by the accused persons, who admit that the vehicle was tempered, although another F.I.R No. 234, dated 18.05.2018, U/s 420/468/471, P.S Golra Sharif, Islamabad was registered, whereby the tempering of the chassis plate is apparent.

8. The ownership of vehicle cannot be determined at this stage as the Chassis plate of vehicle has been found cut and weld.

9. Although the petitioners in both the writ petitions are claiming the ownership of the vehicle in question on the basis of their record and on the basis of some judicial orders, but this Court strongly believes that

such vehicle could not ply on the roads, when its entire character is suspicious. Even otherwise, three different FIRs are in field and question of eligibility has to be seen after recording of evidence in the Courts below during the course of trial, although the question of cut and weld of chassis plate could not be settled by any means even by this Court while dealing with application for Superdari in terms of Section 550 Cr.P.C.

10. In view of above position, I have gone through the orders of the Courts below in both the cases and is in agreement with the order 29.04.2019, passed by learned Additional Sessions Judge-V (West), Islamabad, whereby the said Court directed the S.H.O concerned to take over the vehicle from Mirza Adnan Shuja Taimori/petitioner in W.P No. 2345/2019 by all means and the vehicle shall be impounded in police station. There is no illegality in the said order and similarly the order dated 07.02.2019, passed by learned Sessions Judge (West), Islamabad is also in accordance with law, whereby no jurisdictional defects has been seen and both the Courts below have appreciated the factual aspects in a proper manner.

11. For what has been discussed above, both the writ petitions stand **DISMISSED**. However, S.H.O, P.S Golra Sharif is directed to take over the vehicle from Mirza Adnan Shuja Taimori within 24 hours and impound the same in the police station. If the petitioner Mirza Adnan Shuja Taimori fails to surrender the vehicle, the S.H.O shall proceed against him in accordance with law and the learned Trial Court shall also proceed against surety concerned.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN