

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Revision No.74/2019.

Javed 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.
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01. 04.07.2019 Mr. Muhammad Asif, Advocate for the petitioner.

Through the instant criminal revision petition, the petitioner has assailed the order dated 24.04.2019, passed by learned Sessions Judge/Prevention of Electronic Crime, Islamabad, whereby application for Superdari of amount of Rs.16,95,000/- filed by respondent No.3 has been allowed.

2. Learned counsel for the petitioner inter-alia contends that learned Sessions Judge in case FIR No.07/16, dated 22.01.2016,U/S 36 & 37 ETO-2002, read with sections 420, 468, 471, 109 PPC, P.S FIA, Cyber Crime Circle, Rawalpindi/Islamabad allowed Superdari application regarding amount of Rs.16,95,000/- in favour of respondent No.3 without adhering to claim of the petitioner; that accused Danielson Nawaka entered into import and export business of garments with the petitioner and received Rs.17,00,000/- on the day of his arrest, which were subsequently recovered during the raid conducted by FIA officials as such the amount belongs to the petitioner; that the accused died during incarceration and the case has been abated against him; that the petitioner has not been given opportunity to prove his case and the amount so recovered from the accused has been released to respondent No.3 without any evidence.

3. I have heard the learned counsel for the petitioner and perused the record.

4. Perusal of the record reveals that respondent No.3 got lodged FIR No. 07/16, dated 22.01.2016, U/S 36 & 37 ETO-2002, read with sections 420, 468, 471, 109 PPC, P.S FIA, Cyber Crime Circle, Rawalpindi/Islamabad against Danielson Nawaka, who used to commit fraud through electronic media and lured respondent No.3 for providing chemical, which is used in preparation of US Dollar and deprived him from huge amount of Rs.42,50,000/- and Rs.31,00,000/-, however, during the course of investigation, the accused was apprehended and at the time of his arrest, he was found in possession of Rs.16,95,000/-, which has been declared ^{as} case property. Challan has been submitted before learned Trial Court, however, as per contention of learned counsel for the petitioner, the accused has died in jail.

5. Record further reveals that before passing of impugned order dated 24.04.2019 by learned Sessions Judge for release of 16,95,000/- in favour of respondent No.3, the Superdari application regarding the said amount of the petitioner was already dismissed vide order dated 26.06.2018 i.e. almost 14 months ago but the said order was not assailed by the petitioner, which shows that the said order has attained finality.

6. Besides the above referred position, I have also gone through the agreement dated 22.01.2016, which has heavily been relied by learned counsel for the petitioner executed between the petitioner and accused Danielson Nawaka regarding garments business, whereby it was referred that the petitioner has paid Rs.17,50,000/- to accused Danielson Nawaka. The said agreement contains legal provision to settle the dispute between the petitioner and accused Danielson Nawaka in the following manner:-

“That in violation of the terms and condition of the agreement by the party No.2, 1 (party No.1) reserve all my rights to initiate all legal Civil as well as Criminal proceedings for recovery of amount against you and party No.1 is also responsible to pay the remaining amount when consignment will be delivered at business place in fail to do so party No.2 can initiate legal action against party No.1.”

7. The above referred terms of the agreement spell out that claim of the petitioner against accused Danielson Nawaka is purely of civil nature, which has nothing to do with claim of respondent No.3 of Rs.16,95,000/- and the petitioner reserves his legal right to claim the said amount in accordance with law. The impugned order has rightly been passed in accordance with law.

8. In view of the above reasons, the instant criminal revision petition bears no merits, therefore, the same stands **dismissed in limine.**

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam