

W.P No.1739/2020.

Date of Decision: 22.07.2020.

2. Brief facts as referred in the instant case are that the petitioner purchased vehicle Toyota Land Cruiser Parado, Model 2007, Chasis No.TRJ-120-5094993, Engine Capacity 2700 CC, White Colour from one Muhammad Shafi against total sale consideration of Rs.3,050,000/- through Zakriya City Motors Quetta and thereafter applied for registration of the said vehicle before Excise & Taxation Office, Islamabad. The petitioner was directed to approach the Forensic Lab for the Chemical Examination test of the vehicle before registration. After chemical examination test it revealed that chasis plate is cut and weld, resultantly, FIR No.143, dated 25.04.2016, U/S 420, 468, 471 PPC, Police Station Industrial Area, Islamabad was registered, however, his application for Superdari of the vehicle was rejected by Trial Court as well as by the Court of Sessions and the same was released by this Court vide judgment dated 23.06.2016 passed in writ petition No.2364/2016. The petitioner after conclusion of the trial has been acquitted by the Trial Court and the vehicle was got registered from Excise & Taxation Office, Quetta vide registration No.JEA-040 in the name of Sher Muhammad and the same was seized by the customs authorities without lawful justification despite the fact that all the duties and taxes have been paid by the previous owner Sher Muhammad and same was verified from the Model Customs Collectorate of Appraisement Customs House Karachi.

3. Learned counsel for the petitioner contends that when the custom has been duly paid and all the invoices and import bills have been submitted on record, which were confirmed by the registration authorities, where-after the vehicle was registered, the action taken by the Collector Customs is nullity in the eye of law, especially when no reason has been mentioned as to why the vehicle has been seized.

4. Conversely, learned counsel for the respondents contends that the vehicle in question has been found to be tampered and even the original vehicle was registered under amnesty scheme in 2013 and present registration of the vehicle is based upon fake and forged documents; that the vehicle is smuggled vehicle and intercepted by staff of the customs, whereas the driver failed to produce any import/auction/amnesty document except photocopy of the book, even fresh technical examination of chases was conducted on 18.06.2020, which was found cut and weld and formation and alignment of the digits is abnormal.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that vehicle of the petitioner Toyota Land Cruiser Parado, Model 2007, Chasis No.TRJ-120-5094993, Engine Capacity 2700 CC, White Colour bearing registration No.JAE-040 Quetta has been seized by the customs authorities. Learned counsel for the petitioner has been confronted to produce import/auction/amnesty documents but he has failed to produce the same except the photocopy of the registration book issued by Excise & Taxation Office, Quetta Balochistan. The customs authorities got the vehicle verified from Forensic Science Laboratory, Islamabad, whereby it revealed that vehicle chassis plate has been found cut and weld although the petitioner has placed explanation that previously FIR was lodge vide No. 143, dated 25.04.2016, U/S 420, 468, 471 PPC, Police Station Industrial Area, Islamabad when the same was placed for registration before Excise & Taxation Office, Islamabad and it was found cut and weld, however, he was acquitted from criminal case, and his vehicle was released by this Court vide judgment dated 23.06.2016 passed in writ petition No.2364/2016 with following observations:-

"9. In view of above mentioned grounds and reasons both the Courts below have misconstrued the provisions of section 516-A Cr.P.C, therefore, the impugned order dated 21.05.2016 passed by learned Additional Sessions Judge (West) Islamabad and order dated 09.05.2016 passed by Judicial Magistrate 1st Class (West)

Islamabad are hereby set-aside the Vehicle Toyota Land Cruiser Parado applied for, bearing Model 2007, Chassis No.TRJ-120-5094993, Engine capacity 2700 CC, White color is hereby released on Superdari to the petitioner subject to surety bond of amount equivalent to its tentative value of Rs.2,500,000/- (rupees twenty five lac) with further restriction that vehicle in question shall not be used on road nor same can be used for driving purpose in any manner and it should be kept at home only till the decision of criminal case. It is hereby made clear that if the said vehicle has been used for driving purposes this order of Superdari shall stand recalled automatically and investigation officer is authorized to recover the vehicle by all means and place in police custody with the police station limits."

7. The above referred observations clearly settles issue of Superdari only and it does not create any right in favour of any person, even the petitioner at that time, who was Shah Wali Ullah and the vehicle was handed over to him on Superdari, whereby he was not allowed to ply the vehicle on the road although the record produced at that time by the Sahah Wali regarding payment of duties, taxes and redemption fine was tentative assessment through the said document, which has to be scrutinized by the customs authorities, which have exclusive authority and same falls within jurisdiction of custom authorities as such the Additional Collector Customs has taken categorical stance that original vehicle was already registered in the year 2013 under amnesty scheme as such documents, which have been used for registration of this vehicle are fake and forged and even no custom duty has been paid and different vehicles have been registered against one number for the same document. It is case of the petitioner that previous FIR has already been settled and after acquittal by the competent Court, the vehicle has been registered in Quetta, this prima facie explains that petitioner Shah Wali after obtaining the vehicle from this Court got registered the same from Quetta in violation of law and he blatantly violated order of this Court, whereby he cannot ply the vehicle on the road and the same has to be seized, if the same is used on the road. The Additional Collector Customs has also demonstrated from the record that show cause notice was issued to the petitioner on 21.07.2020 under the Customs Act, 1969 and under the other relevant law, therefore, there is no question of release of the vehicle as legal course has taken effect. The petitioner is directed to approach customs authorities for redressal of his grievance. It is expected from the respondents department to proceed in accordance with law notwithstanding the judgment passed by this Court in writ petition No.2364/2016 on 23.06.2016 titled *Shah Wali vs. Additional Sessions Judge (West) Islamabad etc.* which

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has lost its effect and the same cannot be used by the present petitioner to establish his right in any manner.

8. In view of above discussion, the instant writ petition bears no merits, therefore, the same is hereby **dismissed.**

(MOHSIN AKHTAR KAYANI)
JUDGE

R. Anjam