

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

**W.P. NO: 401 /2016**

**FAZAL HUSSAIN VS THE STATE, ETC**

Serial No. of order of proceeding.	Date or order of proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

18.2.2016

Mr. Sajjad Haider Malik, Advocate for the petitioner,  
Mr. Jamshid Khan Advocate for complainant,  
Mr. Sadaqat Ali Jahangir, learned State Counsel with Zafar Iqbal ASI.

**ORDER**  
**MUHAMMAD ANWAR KHAN KASI, CJ:**

Petitioner [Fazal Hussain] is aggrieved of order dated 20.01.2016, passed by learned ASJ-III (West) Islamabad, whereby revision petition filed by respondent No.2 [Waqas Ahmad] assailing order dated 24.08.2015, of learned Executive Magistrate PS Shalimar, Islamabad, was accepted, and interim custody of Vehicle HZ-056, Model 2005, Corolla SE was given to respondent No.2.

2. Precisely, relevant facts are that vehicle in question was impounded by the police under section 550 Cr. PC from the possession of respondent No. 2 [Waqas Ahmad] which led to filing of three separate petitions for interim custody; one by petitioner, second by respondent No.2 [Waqas] and third by Naseem Ahmad. During the proceedings, Naseem Ahmad withdrew his claim while the two others contested. Learned Executive Magistrate allowed application in favour of the applicant on the basis of title documents in his favour. Feeling aggrieved by said order, respondent No.2 filed revision petition which was allowed vide impugned order dated 20.01.2016.

3. Learned counsel questioned the impugned order, inter alia, on the ground that petitioner is registered owner of the vehicle, but learned ASJ while disturbing custody of vehicle failed to take into account the real facts respecting which petitioner had got registered FIR against Naseem Ahmad, Hayat and Waqas. Elaborating his case, learned

counsel argued that petitioner sold the vehicle to one Azhar Hayat against consideration of Rs.1050000/-; who issued cheque for the said amount but the same stood dishonoured. Subsequently, in order to usurp the vehicle Azhar Hayat, in league with rival claimant Waqas and Naseem, prepared forged open transfer letter and handed over the vehicle to Waqas, from whose custody it was taken into possession. It is further averred that petitioner also lodged an FIR against the said culprits but police in league with respondent No.2 recommended cancellation where after he filed a private complaint which has been admitted for regular hearing.

4. In above backdrop, learned counsel concluded that the petitioner is admittedly registered owner of the vehicle and there is no denial of the fact that he sold out the same to Azhar who failed to make payments, therefore, the learned Revisional Court had no justification to reverse the order of learned Executive Magistrate which is well reasoned and in accordance with the spirit of law on the subject.

5. Learned counsel for respondent No.2 repelled the above submissions by stating that criminal action cannot be set in motion in aid of injustice. According to learned counsel, petitioner attempted to convert civil dispute into criminal one by getting the vehicle impounded under section 550 Cr. PC. The dispute with regard to title is exclusively the domain of the Civil Court. It is further averred that case lodged by the petitioner has been recommended for cancellation and that there is no report with regard to forgery or preparation of any forged transfer letter. It is added that no cheque or its dishonour slip, as contended by the learned counsel for petitioner, has ever been produced by the petitioner.

6. Learned Deputy Attorney-General stood behind the impugned order. According to him, same had been passed in accordance with law on the subject.

7. Besides giving due consideration to the submissions advanced by both the sides, recoded

[illegible]

9. It is to be kept in mind that this Court has to confine to the extent of proceedings pursuant to which vehicle was impounded by the police. Said action was

taken under section 550 Cr. PC. The law on the subject is specific. The Hon'ble Apex Court in case "Hassan Muhammad Versus Nazar Hussain" [2005 SCMR 1063] laid down following principle:-

"550. Powers to Police to seize property suspected to be stolen.---- Any Police Officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such Police Officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer."

In view of the above the question of title of the tractor and whether the conditions enumerated in the alleged executed agreement concerning the sale of tractor in question were complied with or otherwise squarely falls within the ambit of Civil Court. The parties may approach the Civil Court if so desired for the redressal of their grievances. As mentioned hereinabove that the tractor in question could not have been seized under section 550, Cr.P.C and thus, the action of police is not only unlawful but depicts highhandedness and abuse of authority. It is worthwhile to mention here that the shops given by the petitioner have been rented out by Nazar Husain (respondent No.1) who is enjoying the rent of the said shops and besides that an amount of Rs 1,11,000/- was also received by him. Nazaar Hussain (respondent No.1) is present and directed to hand over the tractor in question to Hassan Muhammad (petitioner) immediately. Abdul Latif, Sub-Inspector of Police is also present and is hereby directed to get the order implemented in letter and spirit."

10. Another important aspect of the case is that after taking the property in custody, it is mandatory to report it to the Magistrate under section 523 Cr PC without any loss of time but in the present case, no such effort was made which is violation of Sections 523 & 550 Cr. PC.

11. Admittedly vehicle in question is neither stolen nor involved in the commission of any offence, therefore, it could not have been impounded by the police under section 550 Cr. PC. The dispute with regard to title exclusively falls within the domain of Civil Court and criminal proceedings cannot be initiated, at the behest of any party, to exert pressure or to resolve the dispute according to their desires. Vehicle was taken in possession from the custody of respondent No.2 and according to law it is required to be handed over to him, therefore, the findings to this effect of learned ASJ are correct and do not call for any interference.

12. The proceedings initiated by local police under section 550 Cr. PC in the present case are violative of mandatory provisions, therefore, same cannot sustain.

Resultantly, while exercising powers vested under section 561-A Cr. PC, proceedings initiated by the police under section 550 Cr. PC are quashed. Copy of the order be sent to the IG, ICT for imparting necessary instructions to the police stations to refrain from indulging in private disputes of the parties and to take necessary action against the delinquents under the law.

(CHIEF JUSTICE)

Approved for reporting.

(CHIEF JUSTICE)

S.Akhtar

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