

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No.170/2020

Tariq Mehmood

Versus

Learned Additional Sessions Judge, Islamabad-West etc

Petitioner by: Raja Arsahd Hayat, Advocate.
Respondent No.3 by: Mr. Tahir Hameed Khan, learned State
Counsel alongwith Altaf Hussain S.I.
Date of Decision: 03.03.2020.

FIAZ AHMAD ANJUM JANDRAN, J:- Through the instant writ petition, petitioner prays for setting aside of orders dated 04.11.2019 & 21.11.2019 passed by learned Ilaqa Magistrate and learned ASJ Islamabad-West, whereby his application for *superdari* of vehicle bearing registration No.BD-2779 had been disallowed.

2. Relevant facts for the disposal of instant writ petition are that on 02.04.2019 one Naseer Ahmad presented the subject vehicle for chemical examination by the Forensic Science Laboratory, Islamabad and pursuant to chemical examination, its chassis number was found tempered. On the basis of said report of FSL, FIR No.72 under sections 420, 468, 471 PPC was registered at Police Station Shams Colony, Islamabad on 20.06.2019. During the investigation, said Naseer Ahmad produced stamp paper whereby he had purchased the said vehicle from one Muhammad Rafiq; said Muhammad Rafiq joined the investigation on 20.09.2019 and testified to have sold the subject vehicle to Naseer Ahmad and further disclosed that he purchased the said vehicle from Tariq Mehmood, petitioner herein. The local police, during investigation found the sale transactions as genuine while verification of the registration book had also been got conducted by the E.T.O, Office Karachi. In addition, in order to trace out whether the said vehicle had been involved in any crime,

reports were also sought from Rescue 15, ICT and ACLC, Karachi and both the said reports confirmed that the subject vehicle was not involved in any criminal activity. Petitioner then filed an application for *superdari* before the learned Ilaqa Magistrate which was dismissed vide order dated 04.11.2019 while his revision petition met the same fate vide order dated 21.11.2019 passed by learned ASJ, Islamabad-West, hence instant writ petition.

3. Learned counsel for the petitioner contends that the purchaser himself brought the vehicle in question for verification of laboratory and four digits of its chassis number were found tampered where-after it was impounded by the police authorities; no one else is claimant of the said vehicle; same is lying in open yard of the police station and deteriorating day by day, therefore, petitioner being lawful owner is entitled to *superdari*. Learned counsel placed reliance upon case law reported as *Humayun Azam Vs Ch. Sadiq, Inspector/S.H.O. Police Station Kanjah, District Gujrat and 3 others (1999 MLD 1674 Lahore)*.

4. Learned State Counsel, however, supported the impugned orders by stating that a vehicle with tampered chassis number cannot be allowed to ply on the roads and both the learned Courts below had rightly rejected the application as well as revision petition of the petitioner.

5. Arguments heard. Record perused.

6. When confronted, the I.O. verified the stance of learned counsel for the petitioner that there is no other claimant of the said vehicle. He also submitted that verification of the title documents regarding purchasers of said vehicle had been confirmed by the concerned E.T.O, Office Karachi, where same is registered and found to be correct and genuine. Further submits that as per record of stolen properties kept by the ICT and the authorities of

Karachi, it is reported that said vehicle is neither stolen one nor had been used in any criminal case. Vide report dated 10.02.2020 submitted by respondent No.3, it is reported that a purchaser himself produced the vehicle in the laboratory for its verification and two/three purchasers of the vehicle have been investigated and it was found that they all are genuine and at present the last purchaser i.e. the petitioner is appearing as owner in the record of the E.T.O, Office Karachi and all others have surrendered in his favour.

7. Record annexed with the writ petition and report submitted by respondent No.3 reveals that the said vehicle was purchased from the petitioner by one Muhammad Rafiq, who joined the investigation on 20.09.2019. Said Muhammad Rafiq testified to have sold the subject vehicle to Naseer Ahmad, who brought the same in the laboratory for its verification wherein four digits of its chassis number had been found tampered and engine number had been found in genuine condition. When said Naseer was confronted, he produced original stamp paper of purchase which was found genuine as per investigation. Now said purchaser had received his money back which he paid to the petitioner and surrendered all his rights in favour of present petitioner, therefore, at present no one is claimant of the said vehicle except the petitioner.

8. The main object of the *superdari* is that the property is not further damaged or deteriorated with the efflux of time while in the present case the subject vehicle is lying in the open yard of the police station since 03.04.2019 which is causing damage to the said vehicle. When said vehicle was not used in any criminal offence then its lying with the police authorities for indefinite period would be against the law on the subject. In this respect I am benefited by the case laws reported as *Zaheer Abbas Vs Muzafar Khan*

(2016 YLR Note 21), Rustam Khan Vs State (2012 MLD 322 Peshawar), Lal Zada Vs The State (2011 YLR 377) & Pitras Masih Vs State (2009 PCr,LJ 637).

9. In case reported as ***Lal Zada Vs The State (2011 YLR 377)*** it is held that:-

“7. It is established on the record that the vehicle in question has no criminal history as there is nothing on the record to reflect that the same was either a stolen property or was ever used in the commission of any offence. No rival claimant of the vehicle in question has come forward to claim its ownership, so when this being the situation a vehicle of the value of more than a million cannot be left in the custody of the police, who surely will be finis-utilizing the same. Only allegations of having a bogus registration or a tampered chassis number, custody of the vehicle to a person claiming himself to be the bona fide purchaser which prima facie on the record is also established, cannot be refused to him. So in this view of the matter, this Court having no other option but to allow this petition and to order the custody/superdari of the vehicle to the petitioner till decision of the case, on furnishing surety bonds in the sum of Rs.14,00,000 with two sureties each in the like amount to the satisfaction of the Illaqa/Deputy Judicial Magistrate. Needless to say that the sureties should be local and men of means. The vehicle in question should be handed over to the petitioner according to the inventory made by the local police at the time of taking its custody.

Before parting with the judgment, it seems appropriate to mention here that decision of instant petition was not possible without discussing the merits of the case. So, any such finding is supposed not to prejudice the mind of the Court.”

10. The record of Rescue 15 as confirmed by the I.O. reveals that the said vehicle is neither stolen one nor involved in any offence while it is established through the record that the vehicle had no criminal history as there is nothing on record to reflect the same. No rival claimant/owner has come forward to claim the vehicle. The record of E.T.O, Office Karachi confirms the stance of the present petitioner.

11. Keeping in view the above position and to save the vehicle from further deterioration, the instant writ petition

is allowed. Impugned orders dated 04.11.2019 & 21.11.2019 are set aside and respondent No.3 is directed to handover the subject vehicle to the petitioner on *superdari* subject to his furnishing surety bonds in the sum of Rs.10,00,000/- with one surety of the like amount to the satisfaction of concerned S.H.O. The petitioner will be bound to produce the said vehicle on each and every date whenever required by the learned Trial Court or the local police.

**(FIAZ AHMAD ANJUM JANDRAN)
JUDGE**

M.A. Reza