

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Criminal Appeal No.127 of 2020
Raja Adnan Akbar
Versus
The State, etc.

Appellant by: Raja Abid Mahmood, Advocate.
Respondent: Dr. Waseem Ahmed Qureshi, learned
Special Prosecutor, ANF with Shiraz
Inspector, ANF.
Date of Hearing: 08.09.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant criminal appeal, appellant impugns the order dated 15.06.2020 passed by the learned Judge Special Court, CNS, Islamabad, whereby application filed by the appellant for *superdari* of vehicle No.ABK-859, Engine No.Z462044, Chassis No.NZE17OR-4088147 Toyota Corolla white colour model 2016, ('the vehicle') seized by A.N.F authorities in F.I.R. No.176, dated 25.8.2019, under Section 9-C, CNSA, 1997 was dismissed.

2. Precisely, the facts relevant for the disposal of instant appeal are that on 25.08.2019, the staff of ANF/RD North Rawalpindi intercepted the vehicle with accused Abid and on its search, Charas Garda weighing 02-KG was recovered from beneath the driving seat. During the trial, appellant filed application for *superdari* of the vehicle on the ground that he executed an agreement with Muhammad Ajmal Qureshi son of Muhammad Aslam Qureshi resident of New Abadi Post Office Alipur, District Islamabad, who is running rent a car business, in the name & style of Qureshi Tours at Alipur, Islamabad for three years w.e.f. 01.02.2017 to 01.02.2020 and handed over the vehicle to him; that on 31.12.2018, the vehicle was rented out to one Abid son of Muhammad Sultan and that subsequently it transpired that the vehicle is

involved/detained in the subject case and that he has no nexus or knowledge of the commission of the alleged offence and is a real owner.

The learned Special Judge, CNS Court, Islamabad dismissed the said application vide order dated 15.06.2020, being assailed through instant criminal appeal.

3. Learned counsel for the appellant contends that impugned order is against the law and facts; that the impugned order suffers from misreading, non-reading and misconstruction of the evidence available on record; that the vehicle will be deteriorated if remains in police custody, which will serve no useful purpose for the prosecution; that according to Section 74 of the CNSA, 1997, grant of custody of a vehicle used in the import, export or transportation of narcotics substances to the accused or any of his associates or relative or any other private individual till the conclusion of trial/case is prohibited, but the provision can be extended to cover an owner not involved in the crime as it cannot be construed independently of the provision of Section 32 of the Act which protects the right of the owner, who had no conscious hand or involvement in the offence. Learned counsel relied upon case laws reported as PLD 2020 SC 299, 2010 SCMR 1181, 2003 SCMR 246, 2020 MLD 606, 2016 PCr.LJ 569 Lahore), PLD 2006 Lahore 167, PLD 2009 Lahore 625, 2007 MLD 1372 (Lahore), 2007 PCr.LJ 755 (Lahore) and 2007 PCr.LJ 715 (Lahore).

4. Learned State Counsel, supported the impugned order and argued that the vehicle in question was used in transportation of huge narcotics substance, therefore, learned Judge Special Court, CNS, Islamabad, had rightly rejected the application.

5. We have considered the arguments advanced by learned counsel for the parties and gone through the record available on file.

6. Record reveals that the vehicle is a case property of F.I.R. No.176, dated 25.8.2019, under Section 9-C, CNSA, 1997. It is an admitted position that the appellant is not the registered owner of the vehicle while the trial has already commenced, charge has already been framed. The vehicle, being case property has not yet been exhibited in evidence.

7. The Hon'ble Apex Court in "Amjad Ali Khan V. The State and others" (PLD 2020 SC 299), has graciously held that:-

"The applicant while asserting his ownership of the vehicle must specify in his application for *superdari* how he was deprived of the vehicle, how and when he found out that his vehicle was missing, and the legal proceedings initiated by him thereafter, if any. This becomes important in the light of section 109 of MVO which attracts criminal liability if one drives a vehicle without the consent of the owner. On the other hand, in order to oppose the release of vehicle on *superdari*, the prosecution has to prima facie show from the record that the owner knew that the offence was being or was to be, committed. It is underlined that it is during the trial that the prosecution has to prove that the owner knew that the offence was being or was to be, committed."

8. In addition, in the case of Amjad Ali Khan (*Supra*) it has graciously been laid down that:-

"The first and the foremost condition is that the petitioner must be the "owner" of the vehicle. "Owner" is defined in section 2(24) of MVO to mean a person in whose name the motor vehicle is registered and includes the transferee. Transferee must be duly registered under MVO."

9. In the present case, the appellant described himself as owner of the vehicle but the same is registered in the name of Al-Meezan Bank. Any other document except due registration cannot be termed as a valid document of title

and it does not transfer ownership of a vehicle in terms of Motor Vehicle Ordinance.

10. The appellant will have an opportunity to present his case before the learned Trial Court by producing evidence to explore that he is lawful owner of the vehicle; he was neither the accused nor associated or relative of the accused or an individual having any nexus with the accused. Reliance is placed upon case law reported as Haroon Rasheed and another V. The State (2016 PCr. LJ 56 Lahore).

11. For what has been discussed above we find that the order of learned Judge Special Court, CNS, Islamabad is well reasoned and does not call for interference. Consequently, the instant criminal appeal being devoid of merits is accordingly dismissed. However, the learned trial Court is directed to make every endeavor to conclude the trial of the subject case within a period of four months. If petitioner wants to record his statement, trial court shall provide him opportunity.

(MOHSIN AKHTAR KAYANI) (FIAZ AHMAD ANJUM JANDRAN)
JUDGE JUDGE

Imran