

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 1961/2019

Faisal Mehmood Satti

V/s.

The State, etc.

Crl. Misc. No. 715/M/2019

Aftab Sanaullah

V/s.

The State, etc.

Petitioners by:	Mr. Kashif Sheeraz, Advocate in W.P No.1961/2019. Raja Aamir Shahzad, Advocate in Crl. Misc. No.715/M/2019.
Respondents by:	Malik Awais Haider, State Counsel. Raja Aamir Shahzad, Advocate in W.P No.1961/2019. Mr. Kashif Sheeraz, Advocate in Crl. Misc. No.715/M/2019. Sarfraz Ahmed, S.I.

Date of Decision: 21.11.2019.

MOHSIN AKHTAR KAYANI, J:- Through this common judgment, I intend to decide both the captioned petitions as common question of law and facts are involved as well as parties are same in both these cases.

2. In W.P No.1961/2019, the petitioner Faisal Mehmood Satti has assailed the order dated 14.03.2018, passed by the Judicial Magistrate, Section 30 (East), Islamabad and judgment dated 29.06.2018, passed by learned Additional Sessions Judge (East), Islamabad in Crl. Revision, whereby his application for

superdari of vehicle bearing registration No.UA-797, Toyota Corolla has been dismissed.

3. On the other hand Aftab Sanaullah has filed Crl. Misc. No.715/M/2019 and also claims *superdari* of the same vehicle being complainant of case FIR No.383, dated 06.10.2017, U/S 406 PPC, P.S. Koral, Islamabad, which was refused by the Judicial Magistrate Section 30 (East), Islamabad vide order dated 14.03.2018 and maintained by learned Additional Sessions Judge, Islamabad vide order dated 29.06.2018 in criminal revision.

4. Learned counsel for the petitioner Faisal Mehmood Satti contends that petitioner is the owner of vehicle as per record of Excise & Taxation office and his vehicle has been detained in police station which is likely to be damaged and misused by the police officials if the same is retained in the police station but both the courts below have not appreciated his ownership which is visible on record.

5. Learned counsel for Aftab Sanaullah contends that Aftab Sanaullah is also owner of the vehicle and has got lodged the FIR No.383, dated 06.10.2017, U/S 406 PPC, P.S. Koral, Islamabad, which was misappropriated by the accused Hafiz Naveed as the same was rented out to the accused persons who have misappropriated the same and FIR has been registered at P.S. Koral. He has produced the agreement executed between Hafiz Naveed and him dated 05.11.2016, whereby value of the car was referred as Rs.13,00,000/-. He also contends that vehicle was used for rent a car purpose and as such his due amount was also not paid.

6. Learned State Counsel contends that since there is ownership dispute of the vehicle in question, therefore, till determination of ownership by the competent Court of law, it is appropriate that vehicle in question may be kept in police custody, hence, requested for dismissal of both these petitions.

7. Arguments heard, record perused.

8. I have gone through the arguments as well as record of both the cases and it reveals that vehicle in question UA-797 Toyota Corolla, Chassis No.2115769, Engine No.Y410933, Model 2011 black colour is registered in the name of Faisal Mehmood Satti on 25.01.2018, whereas the subject vehicle was the case property of criminal case FIR No.383, dated 06.10.2017, U/S 406 PPC, P.S. Koral, Islamabad, registered on the complaint of Aftab Sanaullah, petitioner in Crl. Misc. No.715/M/2019 and respondent No.4 in W.P No.1961/2019.

8. The above referred FIR clearly spells out that Aftab Sanaullah was in possession of the vehicle which was rented out to one Hafiz Naveed who misappropriated the vehicle which was subsequently transferred in the name of Faisal Mehmood Satti on 25.01.2018 after the lapse of three months from the registration of FIR. This aspect has already been verified by the I.O who stated that vehicle was already subject matter of FIR No.383, dated 06.10.2017, U/S 406 PPC, P.S. Koral, Islamabad got lodged by complainant Aftab Sanaullah and as such challan has been submitted in the Court on 23.10.2017.

9. Keeping in view the above background, the vehicle in question was initially purchased by Aftab Sanaullah through an agreement appended with Crl. Misc. No.715/M/2019, executed between Sanaullah and Hafiz Naveed vide agreement dated 05.11.2016 and the said fact has been confirmed by the I.O of this case.

10. In view of above, it is settled law that in terms of Section 516-A Cr.P.C. title of the vehicle could not be settled through criminal court and as such only question for determination of the court is to release the vehicle on *superdari*, if there is likelihood that the same will be damaged or destroyed in the police custody. The record *prima-facie* reveals that vehicle was with Aftab Sanaullah as

reflected from FIR No.383/2017, which was purchased by him against sale consideration of Rs.13,00,000/- vide agreement dated 05.11.2016 and when the same was leased out, the said vehicle was misappropriated and Faisal Mahmood Satti got it transferred on his name on 25.01.2018 to justify his ownership, although the vehicle was already case property and subsequent transfer will not take any legal effect but all these questions have to be settled by the competent civil court but this court only confines itself to the question that which of the party was in possession of the subject vehicle prior in time and as such the vehicle was in possession of Aftab Sanaullah, therefore, writ petition No.1961/2019 is hereby dismissed and Crl. Misc. No.715/M/2019 is hereby allowed. The concurrent findings of the courts below against Aftab Sanaullah are hereby set aside and vehicle UA-797, Toyota Corolla be released in favour of Aftab Sanaullah/respondent No.4 in W.P No.1961/2019 and petitioner in Crl. Misc. No.715/M/2019, subject to furnishing of surety in the sum of Rs.13,00,000/- to the satisfaction of learned trial Court. The SHO P.S. Koral is directed to handover the vehicle in question to Aftab Sanaullah within period of 10 days.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid