

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR**

(Judicial Department)

Cr.A No. 483-P of 2015

***Imaran Ali*
Vs
*The State***

JUDGMENT

Date of hearing ***19.11.2015***

Appellant by *Mr. Amjid Noor, Advocate*

Respondent by *Syed Sikandar Hayat Shah, AAG*

MUHAMMAD YOUNIS THAHEEM, J.- Through the

instant appeal u/s 48 CNS Act 1997 r/w Section 32, 33, 74 CNS Act 1997 u/s 516-A Cr.PC, appellant Imran Ali has questioned the impugned order dated 08.08.2015 of learned Additional Sessions Judge/Judge Special Court-V, Peshawar whereby application for ‘*superdari*’ of the vehicle in question was refused to him which was seized by the local police in a case registered vide FIR No. 589 dated 13.07.2015 u/s 9 (c) CNS Act at Police Station Badaber, Peshawar.

2. Brief facts of the case as per contents of FIR are that local police of Police Station Badaber while on usual ‘*gasht*’

received information that contraband narcotics are going to be smuggled from Dara Adam Khel to Punjab so in consequence thereof police party there and then picketed near Flour Mill on “Afridi road” for the purpose of checking in the meanwhile a motorcar bearing No.IDD8131/Islamabad white colour Suzuki Khyber was stopped. On query the driver disclosed his name as Farhat Ali son of Ayub Khan and on further search of motorcar ASI found beneath the driver seat two packets of ‘*charas pukhta*’ which were recovered and on weighment found two Kgs. The contraband “*charas*” alongwith motorcar was taken into possession by the local police on the spot and ‘*murasila*’ was sent through constable Zahir No. 1339 for the registration of case against the accused and so case was registered as mentioned above.

3. The appellant filed an application before the learned Court of Additional Sessions Judge-V, Peshawar for the custody/superdari of the aforesaid vehicle which was refused by the learned Court below vide impugned order dated 08.08.2015. Feeling aggrieved from the impugned order

appellant has filed instant appeal for the custody of the vehicle on '*superdari*', hence this appeal.

4. Learned counsel for the appellant contended that there is no evidence on record to show that the vehicle has been used for the commission of alleged offence with the consent of the appellant or appellant was in any knowledge of the contraband "*charas*" kept in the car by the driver/accused. He further added that the appellant is bonafide owner of the vehicle in question which was given for plying as taxi to the accused on rent/fair and there is no rival claimant of the same, hence is entitled for its possession and the learned Court below did not consider this legal aspect of the case and had refused application vide impugned order; that if the vehicle in question is lying in open air in the police station and if is not returned to the appellant then it will be deteriorated and prayed that the same may be returned on '*superdari*' till the final disposal of the case and will produce as and when required by the learned trial Court during recording of evidence.

5. Conversely, the learned AAG contended that the local police had found the vehicle in question which was used for the purpose of trafficking of narcotics. He argued that as per the contents of '*murasila*' and FIR the alleged contraband "*charas*" was kept under the driver seat and the vehicle is a corroborating piece of evidence and production of same during evidence is necessary for the prosecution to prove its case and if returned on '*superdari*' important piece of evidence could be damaged and supported the judgment/order of learned Court below as well reasoned in accordance with law and prayed for dismissal of appeal.

6. Valuable arguments of learned counsel for the parties heard and record gone through.

7. Perusal of the case file reveals that the vehicle in question was used for the purpose of trafficking contraband narcotics substance without the consent of the appellant and this fact was not in the knowledge of the appellant while the vehicle in question was given to the accused/driver for plying it as taxi on fair/rent by the owner/appellant. In this respect the

material collected by the I.O did not show any slightest kind of suspicion brought on record that appellant was in knowledge that vehicle is used for the commission of alleged offence neither on this aspect case was investigated. In this regard reliance is placed on the case titled as *ASkari Leasing Ltd. Through Manager Vs the State* cited as *2007 P Cr L J 755 (Lahore)*. The relevant part of judgment is reproduced below:

“As to whether any suspicion has been expressed that the petitioner had knowledge that the vehicle is to be used for the commission of said offence or that any investigation had been conducted on the same lines and further any evidence has been collected.”

In the same cited judgment view has been derived from the verdict of Honourable Supreme Court in case titled as *Abdul Salam V. The State (2003 SCMR 246)* is reproduced below:

“In this view of the matter, following the same dictum (2003 SCMR 246) of Honourable Supreme Court upon reading of Section 32 and 74 of CNS Act 1997, we do find that the petitioner who is admittedly the owner of the vehicle is entitled to its release. Criminal Revision is accordingly allowed. The impugned order of learned Additional Sessions Judge, Attock, is set aside and the vehicle is ordered to be released to the petitioner on superdari subject to furnishing of a bond.....”

(cited judgment in braces “2003 SCMR 246” is ours for emphasis)

8. In the instant case the documents annexed with the petition shows that the appellant is owner of the said vehicle and there is no rival claimant of the vehicle in question and there is no any suspicion available on record brought by the I.O that the appellant was in knowledge of alleged crime.

Appellant will produce the same at the time of recording of evidence before the trial Court as when ordered.

9. Thus, we allow this appeal and set aside the impugned judgment and order of the learned appellate Court and the vehicle in question is returned to the appellant on 'superdari' subject to the satisfaction by showing original lawful ownership documents of the said vehicle to the SHO upon furnishing a bond in a sum of Rs.500000/- (five lacs) to the satisfaction of the said SHO/Investigation Officer and further will furnish an undertaking that appellant shall produce vehicle in the trial Court as and when ordered.

Announced.

19.11.2015

JUDGE

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