

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

**Cr.R No. 33-M/2019
With Cr.M 102/2019**

Dilawar Syed.....(Petitioners)

vs

The State & others.....(Respondents)

Present: Mr. Saadat, Advocate for the petitioner.

*Mr. Haq Nawaz, Assistant Advocate General
for the State.*

Date of hearing: 25.09.2019

JUDGMENT

WIQAR AHMAD, J.- My this order is directed to dispose of Criminal Revision bearing No. 33-M of 2019 filed by the petitioner Dilawar Syed against the judgments of two Courts below.

2. Petitioner was alleged to have been driving Suzuki Carry bearing registration No. BA-8231 Peshawar, chassis No. 843023 and engine No. 726504, when it was seized by the local police under sections 523/550 Cr. PC on 17.07.2015 and daily diary report No. 37 was entered in the relevant register. Subsequently, an inquiry under section 157 (1) Cr. PC was initiated. During the course of inquiry, it was found that chassis number of the vehicle had been tampered which resulted

into registration of FIR bearing No. 321 registered on 29.08.2015 in Police Station Ouch, District Dir Lower under sections 419/468/471 PPC against the accused/petitioner namely Dilawar Syed son of Rahmat Syed.

3. On completion of investigation, complete challan was put in Court, charge was framed by the learned Judicial Magistrate on 10.09.2016. The accused/petitioner denied the charge and claimed trial. Prosecution produced as many as nine (09) witnesses, where after statement of accused was recorded under section 342 Cr. PC. Thereafter, the accused/petitioner was convicted by the Court of learned Judicial Magistrate vide its judgment dated 28.02.2019 and sentenced as follows;

- i. Under section 468 PPC to undergo 1 year along with fine of Rs. 5000/- and in default, he shall further undergo for one month simple imprisonment.*
- ii. Under section 471 PPC to undergo 1 year along with fine of Rs. 5000/- and in default, he shall further undergo for one month simple imprisonment.*

4. The convict/petitioner filed an appeal before the learned Sessions Judge, Dir Lower at Timergara which was entrusted for adjudication to the learned Additional Sessions Judge, Dir Lower at Chakdara. The learned appellate Court vide its judgment dated 19.03.2019 partially allowed the appeal to the effect that the accused was acquitted from the charge under section 468 PPC, his conviction under section 471 PPC was however maintained and the recovered vehicle was ordered to be confiscated to the State. Feeling aggrieved of the said order, the convict/petitioner has filed the instant criminal revision on the grounds given therein.

5. Learned counsel for the convict/petitioner submitted that the prosecution lacked the requisite evidence against him as no direct evidence of his involvement in the commission of alleged offence could be brought on record. He submitted that the convict/petitioner was entitled to acquittal but was unjustifiably convicted which order has also been partially maintained by the learned appellate Court without any legal justification.

6. The learned Assistant Advocate General appearing on behalf of the State submitted in rebuttal that the prosecution has been successful in proving the case against the convict/ petitioner. He further added that recovery of vehicle had been proved which was found chassis tampered and its registration number was also found to be fake.

7. I have heard arguments of learned counsel for the convict/petitioner, learned Assistant Advocate General for the State and perused the record.

8. Perusal of record reveals that the convict/petitioner has been acquitted under section 468 PPC by the Court of learned Additional Sessions Judge, Dir Lower at Chakdara as evidence of the accused committing any forgery could not be found by the said Court. The only offence for which he was convicted was under section 471 PPC, which provided punishment for using any document fraudulently or dishonestly as genuine which a person knows or has reason to believe that same is a forged document; such an act has been

provided to be punishable as he has forged the document.

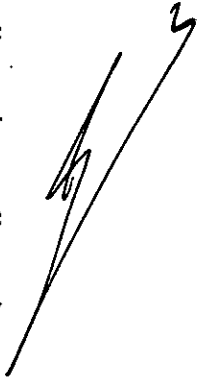
9. The prosecution in my opinion could not prove use of the forged document by the convict/petitioner as genuine. Among the witnesses of prosecution, in whose presence the vehicle was recovered at the time of occurrence PW-7 namely Said Zaman Shah Khan SHO and PW-8 namely Mohsin Ali (belt No. 3038) were produced in Court, while other witness of the recovered vehicle namely Shah Zeb (belt No. 1161) was abandoned during the course of prosecution evidence. None of the witnesses had ever stated that the accused/petitioner had ever presented them any registration book or used the same as genuine. Beside the two witnesses, no evidence could be produced that the accused/ petitioner had ever used the fake registration book as genuine at the time of plying the vehicle on the road. A copy of registration book was however stated by the other PWs to have been produced before the Investigating Officer by the accused/ petitioner. To this effect, statement of PW-5 namely Fayaz-ur-Rahman Head Constable was recorded who has

stated in his examination-in-chief that the accused/petitioner produced registration book in respect of the vehicle on 22.07.2015 before the I.O. He could not tell about the number of pages of the registration book. PW-6 i.e. the Inquiry Officer has stated that he took into possession copy of the registration book which was being presented by the accused/petitioner. PW-9 has also stated that the Inquiry Officer took into possession the registration book exhibited as Ex PW 6/2 in his presence. The original registration book has nowhere been produced in evidence. Muharir of the Police Station appeared as CW-1 but categorically stated that the entry of registration book had never been made in the register No. 19. In this regard, he also produced daily diary bearing No. 53 dated 12.02.2019 as Ex CW 1/1.

10. As stated earlier, accused/petitioner has nowhere used the registration book as genuine while plying the vehicle on record. At the time of seizure of the vehicle also the accused had not produced the registration book. So far as recovery of copy of the registration book from the accused during the course of inquiry is concerned; it is important to be noted that in this respect, recovery

memo Ex PW 6/2 was drafted, wherein it has been stated that the registration book was taken into possession by the I.O on 22.07.2015 but while appearing as witness, he has produced a copy of the registration book and the original registration book could nowhere be produced during trial. Non production of the original registration book during trial, when it has been so mentioned in the recovery memo that original had been taken into possession, makes the case of prosecution doubtful.

11. Even if we assume the production of registration book as proved, then it is relevant to be noted that during the course of an investigation or inquiry, an accused is legally bound to produce the relevant documents. If he does not produce any document, same may result in an action against him. When he produced certain documents before the inquiry officer, then it cannot be said that he had used a bogus document as genuine. The word “use” coined in section 471 PPC would mean a voluntary and intentional act of using a forged document as genuine coupled with the fact that the person knows or has reason to believe that same was a forged document. In the case in hand, the



document has not been used as genuine by the convict/petitioner and secondly no evidence had ever been brought on record that he had the knowledge or had reason to believe that the document was forged and factitious. In such situation, conviction of the accused under section 471 PPC was not justified.

12. In light of what has been discussed above, the instant criminal revision is partially allowed to the effect that the accused/petitioner is acquitted of the charge under section 471 PPC by extending him benefit of doubt. The vehicle i.e. Suzuki Carry bearing registration No. BA-8231 Peshawar, chassis No. 843023 and engine No. 726504 is not however found to be a genuine vehicle as its chassis number had been tampered. Same is therefore ordered to be confiscated to the State and to that extent, judgments of the two Courts below are maintained.

Announced
Dt: 25.09.2019


JUDGE

29/10/2019
W/R