

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

**Q.P. No. 63-M/2016**

**JUDGMENT**

Date of hearing: **24.02.2017.**

Petitioner:- *(Ihsan-ul-Haq) by Mohammad Hayat Khan, Advocate.*

Respondents:- *(the State & 1 another) by Mr. Rafiq Ahmad, Astt: Advocate General and Mr. Sahadat, Advocate.*

**MOHAMMAD IBRAHIM KHAN, J.-** Verily the learned Judicial Magistrate/Illaqa Qazi Matta Swat by the singled-out order dated 28.5.2016 disposed of separately filed Petitions for obtaining 'Superdari' of the Flying Coach NCP Chassis No. TRH112-0004706, Engine No. ITR-0013973, Model 2003, White Colour, which is subject-matter of case FIR No. 398 dated 23.4.2016. Convinced with the documentary proof of the so called lawful Applicant Akbar Khan the vehicle in question was given to him. Conditions were however hitched that as and when it is required to either local police or the Court, it shall be produced. It

shall not be disposed of in any manner till final conclusion of the fate of the case. Such findings were assailed before the Court of learned Additional Sessions Judge/Izafi Zila Qazi Matta Swat in Revision Petition bearing No. 18/10 of 2016, which was also disposed of vide the order dated 25.6.2016. The order of the learned Judicial Magistrate/Illaqqa Qazi Matta Swat was absolutely considered to be lawful and hence Revision Petition was dismissed.

2. This Quashment Petition under section 561-A of the Criminal Procedure Code read with Paragraph 10 (8) of Shariah Nizam-e-Adl Regulation 2009, whereby the following prayer has been set forth:-

*"It is therefore humbly prayed, that on acceptance of this Quashment Petition, the impugned orders dated 25.6.2016 of Respondent No. 3 and 28.5.2016 of Respondent No. 4 may please be quashed and declared illegal, without lawful authority, without jurisdiction, null a& void and the Vehicle Flying Coach NCP Chassis No. No. TRH-112-0004706, Engine No. ITR-0013973 Model 2003 White*

*Colour may kindly be handed over to the Petitioner on 'Superdari'.*

*Any other relief, deemed appropriate by this Hon'ble Court and do not specifically asked may also be granted to the Petitioner.*

3. The extracts of the First Information Report of an occurrence dated 21.4.2016 on the basis of '*Murasila*' whereby this FIR has been lodged would reveal that the Applicant Akbar Khan moved an application to the Station House Officer of PS Matta in respect of custody of Flying Coach and for initiation of criminal proceedings against the accused/Respondent. Wherein he deposed that on 11.12.2015 his close relative by name of Aziz Said Nawab had taken his vehicle for the purpose of cleaning when the accused/Respondents had taken the vehicle from him through fraud on the pretext of purchase. Thereafter an inquiry within the meaning of Section 156 (3) Cr.P.C was initiated and the Flying Coach in question was recovered from the petrol pump of accused/Respondent

Ihsan-ul-Haq, Petitioner herein, hence, FIR *ibid* lodged against him.

4. Having heard arguments of learned counsel for the parties and learned A.A.G. for the State, record gone through with their valuable assistance.

5. Learned counsel for the Petitioner relied on the judgment of this Hon'ble Bench in *Cr.M Q.P. No. 57-M/2015 titled as "Ayaz Mohammad vs the State/Pir Mohammad Khan", 2007 MLD 1096 (Lahore)" Ali Mohammad vs Additional Sessions Judge and others" and 2005 MLD 176 (Karachi) " Mst. Shaheen Begum vs SHO (ACLC) and others"*.

While inversely learned counsel for the Respondent relied on the documentary evidence which according to him is more authentic for declaration of the vehicle in question to be the ownership of Akbar Khan Respondent/Applicant and thereby prayed for dismissal of the Petition.

6. At present complete *challan* under section 173 of the Criminal Procedure Code has been duly prepared by the Station House Officer of PS Matta, but yet it is to be submitted before the competent Court for the trial. The said *challan* without further loss of time preferably within 10 days from receipt of this Court order shall be submitted to the Court having jurisdiction in the matter so as to hold definite outcome of the trial of this case.

7. At the moment after hearing learned counsel for the parties, both the parties defend the ownership on the basis of the documentary evidence which pertains to certain agreements and receipts of the Bargain Centers. Parties may lead their evidence on the basis of these documents till then it is extremely difficult to believe either documents to be genuine and authentic.

8. If at all the judgments of learned Courts below remained in field, obviously the controversy regarding the ownership, either

party will not get a fair chance for a decisive ownership of the vehicle in question. The impugned judgments may also when it is feared to bring home the charges against the accused who has ultimately been charged for the offence within the meaning of section 406 PPC i.e. criminal breach of trust, which provides punishment of either description for a term which may extent to 7 years or with fine or both.

9. In the meanwhile it is more advisable as to set aside the impugned findings in the orders which are said to be quashed. The Flying Coach NCP Chassis No. TRH112-0004706, Engine No. ITR-0013973, Model 2003, White Colour be parked in the premises of the learned trial Court. The Station House Officer of PS Matta is directed to seize this vehicle for parking the same in the above-referred Court premises. Copy of this judgment be also sent to the learned Judicial Magistrate/Illaqa Qazi Matta Swat to

honor-bound the findings contained in this  
judgment.

*Announced*  
*Dt: 24.02.2017.*

**JUDGE**