

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT

Cr.A No. 318-P of 2016.

JUDGMENT

Date of hearing..... 18.10.2017.....

Appellant: (Mst. Saira Khan) by Mr. Altaf Khan,
Advocate.

Respondents/State: (ANF) by Mr. Muhammad Tariq Kakar,
Advocate.



QALANDAR ALI KHAN, J:-This appeal by Mst. Saira Khan widow of late Rizwan under Section 48 CNSA is directed against the judgment/order of learned Judge, Special Court (CNS), Peshawar, dated 31.03.2016, whereby, application of the petitioner for return of the vehicle (Honda Civic) No.VV-155/Islamabad, was dismissed.

2. The aforementioned motorcar was taken into possession in case vide FIR No.05

dated 11.01.2014 under Sections 9 (c)/14/15 CNSA P.S ANF, Peshawar, after recovery of seven packets of opium, each packet weighing one kilogram total 7 kilograms, and 4 packets of chars, each packet weighing one kilogram, total 4 kgs chars *Garda*, from a secret cavity in the dish-board of the motorcar. At the time of recovery of the narcotics, Imran Dilawar son of Dilawar Masih was found on the driving seat of the motorcar, and along with cash amount and other articles, a receipt of Madina Rent-A car, showing the said accused/appellant in the connected Cr.ANo.607-P/2014 having hired the car for self driving, was also recovered from his possession. After facing trial before the learned Judge, Special Court (CNS), Peshawar, the said accused/appellant was convicted under Section 9 (c) CNSA and awarded the sentence of life imprisonment with fine of Rs.200000/-. The accused/appellant preferred appeal, which has been partially accepted, and

imprisonment for life reduced to five years R.I and fine of Rs.200000/- also reduced to Rs.50,000/- and in default of payment of fine to further two months S.I.

3. The learned Judge, Special Court (CNS), Peshawar, dismissed application of the petitioner/appellant, mainly, on the ground that partnership of late Rizwan, predecessor of the petitioner/appellant, with the accused/appellant in the connected criminal appeal could not be ruled out; and, at the same time, passed order of confiscation of the vehicle, which was not made earlier on account of pendency of petition of late Rizwan for return of the vehicle on superdari.

4. Arguments of learned counsel for the appellant and learned AAG heard, and record perused.

5. The perusal of record would show that there is no rival claimant; and further at the time of arrest of Imran Dilawar, appellant in the connected appeal, after recovery of the contraband from the motorcar, a receipt of

Madina Rent-A Car, owned by Rizwan, late husband of the appellant, was also recovered from the accused/appellant in the connected appeal, showing hiring of the car by him for self driving. As such, with proof of driving of the car by accused/appellant, Imran Dilawar, at the relevant time, this fact was also clearly proved that the car belonged to Madina Rent-A Car, owned by the late husband of the appellant. Moreover, it has also been proved on the record that Rizwan purchased the car from Azam Khan who had purchased the same through an open transfer letter from the registered owner, namely, Noor-ul-Amin. The said Noor-ul-Amin, a doctor by profession, also appeared as CW.3 and deposed about sale of the car by him.

6. Therefore, in view of evidence adduced in support of purchase of the car by Rizwan, late husband of the appellant, absence of rival claimant, and also proof of the fact that the cavity was not specially created in the vehicle, together with evidence

proving the motorcar hired by the accused/appellant in the connected appeal from Madina Rent-A car, there was no justification for declining request of the appellant for return of the vehicle.

7. As such, the appeal is accepted; and while setting aside the impugned order dated 31.03.2016, the application of the appellant for return of the vehicle is accepted, accordingly.

Announced.
18.10.2017.

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M.Iqbal

(D.B) Hon'ble Mr. Justice Lal Jan Khattak.
Hon'ble Mr. Justice Qalandar Ali Khan.