

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

Quashment Petition No. 11-M/2015

JUDGMENT

Date of hearing: **31.7.2015**

Petitioner: (Rafiullah) by Mr. Akhtar Munir Khan, Advocate.

Respondents (State etc) by Mr. Fazal Malik, Advocate
and Mr. Sabir Shah, learned A.A.G.

HAIDER ALI KHAN, J.- This quashment petition is directed against the judgment/order dated 05.3.2015 of the learned Sessions Judge/Zilla Qazi, Dir Lower at Timergara whereby criminal revision petition of the respondent No.2 against the order dated 23.1.2015 of the learned Judicial Magistrate Timergara was partially accepted and Motorcar Toyota Premio Model 2007 bearing Registration No.YF-543-Islamabad, Engine No.A014800, Chassis No.ZRT260-3001368 was given in custody of the local police.

2. Precise and relevant facts of the case are that consequent upon an initial report of respondent No.2 in respect of the vehicle in question, the Political Agent Bajaur Agency referred the case to District Police Officer, Dir Lower vide letter bearing Endst: No. 7466 dated 20.12.2013 whereafter report was recorded vide Daily Diary No.31 dated 30.12.2014 in Police Station Timergara. Later on inquiry under section 156(3), Cr.P.C was initiated in compliance with the order dated 01.1.2015 of the learned Judicial Magistrate/Illaqa Qazi Timergara. During the course of inquiry the vehicle in question was taken into possession by the local police, however, the petitioner as well as the respondent No.2 submitted separate applications for custody of the vehicle in question before the learned judicial Magistrate who accepted application of the petitioner and handed over custody of the vehicle to him vide order dated 23.1.2015. Being aggrieved,

the respondent No.2 filed a revision petition before the learned Sessions Judge, Dir Lower, against the order of the learned Judicial Magistrate which was partially accepted vide order/judgment dated 05.3.2015 and the vehicle was again given in possession of the local police. Hence, the quashment petition in hand.

3. Arguments heard and record perused.

4. It transpires from perusal of the record that inquiry under section 156 (3) in respect of the vehicle in question was conducted by the local police in compliance with the order dated 01.1.2015 of the learned Judicial Magistrate and inquiry report in this regard was submitted in Court by the SHO concerned on 14.1.2015. According to the inquiry report, the petitioner is the actual owner and last possessor of the vehicle in question. The relevant portion of the inquiry report is reproduced herein below for convenience sake.

"پس من ایچ اونے عدالت کی احکامات کی تعمیل کرتے ہوئے معاملہ کی نسبت حسب ضابطہ انکوائری شروع کی۔ دوران انکوائری مسمی رفیع اللہ کو طلب کر کے اس سے موٹر کار کے متعلق اصل کاغذات پیش کر نے کا مطالبہ کیا گیا تھا۔ تو مذکورہ نے موٹر کار کے متعلق رجسٹریشن کاپی اور اصل ٹرانسفر لیٹر پیش کر کے پیش کردہ کاغذات بروئے فرد قبضہ پولیس ہوئی۔ اسی طرح ڈاکٹر عنایت الرحمان نے ایک ٹرانسفر لیٹر جس پر صرف مسمی رحم سید ولد سید جمال ساکن کرنل شیر کلے ضلع صوابی کا دستخط ثبت ہے جو کہ موٹر کار کا سابقہ مالک تھا اس کا شناختی کارڈ کا فوٹو سٹیٹ بھی لف ہے، پیش کر کے بروئے قبضہ پولیس ہوئی۔ اس طرح ڈاکٹر عنایت الرحمان دو عدد بیانات بھی بابت موٹر کار پیش کر کے قبضہ پولیس ہوئی ہے۔ مسمی رفیع اللہ نے بھی موٹر کار کی بابت بیع نامہ پیش کر کے قبضہ پولیس ہوئی۔ مورخہ 09.1.2015 کو بذریعہ تحریری درخواست رجسٹریشن اتھارٹی اسلام آباد سے کاغذات بابت موٹر کار پیش کردہ رفیع اللہ، عنایت الرحمان تصدیق کرنے کی استدعا کی گئی۔ رجسٹریشن اتھارٹی اسلام آباد نے رفیع اللہ کی پیش کردہ کاغذات کی تصدیق کرتے ہوئے واضح کیا کہ پیش کردہ کاغذات دفتر ہذا سے جاری شدہ اور اصلی ہے اور موٹر کار کا اصل مالک بمطابق ریکارڈ مسمی رفیع اللہ ولد محمد قیوم ہے"

The above extract from the inquiry report clearly shows that the petitioner produced before the local police the original registration and transfer letter of the vehicle besides the same have duly been verified by the Motor-Vehicle Registration Authority, Excise & Taxation Department, Islamabad. The inquiry further reveals that the said Authority has denied the verification of transfer letter produced by the respondent No.2 by terming

the same as blank one. The inquiry report also reveals that the petitioner produced sale deed of the vehicle before the local police who recorded statement of Abdul Musta'an from whom the petitioner purchased the vehicle in question against sale consideration of Rs.25,00,000/-. Similarly, the local police also recorded statement of Akbar Khan son of Itbar Khan who purchased the same vehicle from one Noor Muhammad against sale consideration of Rs.28,00,000/- and sold out the same to Abdul Musta'an. Hence, according to the inquiry report of the local police, the petitioner is last owner and possessor of the vehicle in question, being a bona fide purchaser thereof.

In this regard guidance can be sought from the judgment delivered in case of “**Kadirminq Vs. The State and another (1998 SCMR 2542)**” wherein custody of vehicle was handed over to petitioner therein on the basis of facts identical with

those of the present case. The relevant portion of the judgment is reproduced as under:-

“ We are of the view that no exception can be taken to the impugned order of the High Court, inasmuch as the recovery of the omni bus was made from the driver of Ghulam Hyder and besides, the name of Ghulam Hyder was also found mutated in the relevant Excise and Taxation record. As to whether such mutation had resulted upon fraud being practiced by illegally tilling up the blanks in the transfer papers etc. are questions which must await due determination at the level of the Civil Court.”

Yet in another case having identical facts reported as **1992 SCMR 1454** the august Supreme Court observed that:-

“It cannot be denied that the van was seized from the possession of the appellant. It is yet to be seen whether the documents produced by the appellant in the Civil Court are based on forgery or not and it is only the Civil Court which can determine the question of title. Prima facie appellant is entitled to the custody of van in dispute.”

Record shows that the vehicle in question was seized from the petitioner and his name is mutated in record of the Excise and Taxation Department. In that respect original registration book, transfer letter and sale/purchase deed from the last owner are part of the record. In addition to the above, statements of the witnesses also supports the petitioner's version, hence, prima facie the petitioner is entitled to the custody of vehicle. So far as contention of the respondent No.2, is concerned, he has nothing in support of his ownership of the car except a blank transfer letter and a report to the Political Agent Bajaur Agency that the vehicle is stolen one. However, question of title of the vehicle in question is still disputed which cannot be determined by this Court while exercising its jurisdiction under section 561-A, Cr.P.C and the proper forum for this purpose is the Civil Court, therefore, both the parties should approach the said

forum for determination of question of title of the vehicle in question.

5. For what has been discussed above, this quashment petition bearing Q.P No.11-M/2015 is allowed, the impugned order of the learned Sessions Judge/Zilla Qazi, Dir Lower at Timergara dated 05.3.2015 is set aside/quashed. Consequently, custody/supardari of the vehicle in question is handed over to the petitioner subject to his furnishing surety bond in the sum of Rs.25,00,000/- (rupees twenty five lac) with two sureties each in the like amount to the satisfaction of Illaqa Judicial Magistrate/MOD who shall ensure that the sureties are local, reliable and men of means.

Above are the reasons of my short order of the even date.

Announced.
Dt: 31.7.2015.

JUDGE