

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

Cr.M (Q.P) No.26-M/2020

Muhammad Zada son of Shamroz resident of Bati  
Bund Shinko Madyan Tehsil Bahrain, District  
Swat

(*Petitioner*)

Versus

The State through Additional Advocate General  
and 02 others.

(*Respondents*)

**Present:** Mr. Javid Ahmad, Advocate for Petitioner.  
Mr. Razauddin Khan, A.A.G for the State.

Date of hearing: 28.09.2020

**ORDER**

**ISHTIAQ IBRAHIM, J.-** This single order is  
aimed to dispose of instant petition as well as  
the connected petitions, as similar questions  
of law and facts are involved in all the  
petitions. The details of the connected  
petitions are as under:

1. Cr.M 38-M/2019  
Imran Vs. The State and 1 other
2. Cr.M 57-M/2019  
Riaz Khan Vs. The State
3. Cr.M 67-M/2019  
Kashmir Khan Vs. The State and others
4. Cr.M 72-M/2019

SCANNED

Syed Jabar Shah Vs. The State and 1 other

5. Cr.M 80-M/2019  
Muhammad Vs. The State and others
6. Cr.M 03-M/2020  
Muhammad Naseer Vs. The State
7. Cr.M 10-M/2020  
Sardar Ali Vs. The State and 1 other
8. Cr.M 11-M/2020  
Akbar Ali Vs. The State and others
9. Cr.M 31-M/2020  
Asaf Khan Vs. The State and 1 other
10. Cr.M 32-M/2020  
Qayum Khan Vs. The State and 1 other
11. Cr.M 40-M/2020  
Tawaqal Khan Vs. The State  
and
12. Cr.M 49-M/2020  
Shah Hussain Vs. The State and others

2. Brief facts of each petition are as  
under:

Cr.M 26-M/2020

Through this petition, petitioner Muhammad Zada seeks return of Non-Custom-Paid (NCP) Probox motorcar bearing chassis No.NCP50-0046587 Model 2005 white Colour, which was taken into possession by police after finding it

suspicious, under sections 523/550 Cr.P.C. During the ensuring inquiry, on examination of the vehicle in question through the FSL, its chassis number was found same but chassis sheet piece was found '*welded and refitted*', hence, FIR No.25 dated 22.01.2020 u/s 420/468/471 PPC at Police Station *Mingora* was registered against one Attaullah. The application of petitioner for return of the motorcar has been concurrently dismissed by both the learned Courts below.

**Cr.M 38-M/2019**

Through this petition, petitioner Imran seeks return of Non-Custom-Paid (NCP) *Vitz* motorcar bearing chassis No.KSP90-5115470, Model 2008 red Colour, which was seized when on 18.4.2018, IHC Zahid Husain Anti-car Lifting Cell, Swat alongwith other police officials during checking of stolen vehicles at the spot stopped it, after finding that it was a registered vehicle, having Registration No.QT-581/Islamabad. After chemical examination of the vehicle in question through FSL, its chassis number was found to be deciphered


one as before examination the same was 'KSP90-5115470' while after examination, it was found as 'KSP90-X036XX0'. Hence, case FIR No.962 dated 04.7.2018 under sections 420/468/471 PPC was registered against the petitioner at Police Station *Mingora*, District Swat. The application of petitioner for return of the motorcar in question has been concurrently dismissed by both the learned Courts below.

**Cr.M 57-M/2019**

Through this petition, petitioner Riaz Khan seeks return of Toyota/Corolla motorcar bearing Registration No. IDN-4132/ Islamabad, chassis No.CE120-0010681, Engine No.3980685, Model 2003 white Colour, which was taken into possession by police after finding it suspicious under sections 523/550 Cr.P.C. During the ensuring inquiry u/s 156 (3) Cr.P.C, on examination of the vehicle in question through the FSL, it was found that its '*original chassis number filled with weld material and not decipherable*', hence, FIR No.180 dated 28.02.2020 u/s

420/468/471 PPC at Police Station Daggar, District Buner was registered against present petitioner. The application of petitioner for return of the motorcar in question has been concurrently dismissed by both the learned Courts below.

**Cr.M 67-M/2019**



Through this petition, petitioner Kashmir Khan seeks return of vehicle i.e. Datsun bearing Registration No. KG-4181, chassis No.LN85-0074161, Engine No.ZL2681392, Model 1991, which was initially taken into possession by police after finding it suspicious vide daily diary No.13 dated 15.7.2017. On completion of inquiry u/s 156 (3) Cr.P.C, the same was handed over to the petitioner by the learned Additional Sessions Judge vide order dated 24.10.2018, however, subsequently on examination of the vehicle in question through the FSL, it was found that '*five digits in its chassis number have been filled with welding material and re-stamped*' while on its verification through VVS SIM, the chassis number of the same was found to be matching

with another registered Vehicle No.DIK-4167 Engine No.21-2681392. In light of opinion of DDP, a case FIR No. 56 dated 03.4.2019 u/s 420/468/471 PPC at Police Station *Chakdara*, District Dir Lower, was registered against the present petitioner and others. Then, the State filed a criminal revision petition before the learned Additional Sessions Judge against order dated 24.10.2018, which was allowed and accordingly the custody of vehicle in question was ordered to be taken back from the petitioner, hence, this petition.


**Cr.M 72-M/2019**

On 16.6.2016, NCP motorcar No.380/PSN chassis CE100 13010827 Engine No.2C2035662, being driven by one Rafiullah, was stopped by police for the purpose of checking. It was checked through VVS SIM and after finding that on same chassis number another motorcar bearing No.LXO-183 has also been registered at Lahore, thus, the motorcar was taken into possession vide daily diary No.45. During the ensuing inquiry u/s 156 (3) Cr.P.C, the vehicle was

examined through FSL, according to report of FSL, the vehicle has '*welled and refitted chassis sheet*'. Hence, case FIR No.1010 dated 20.10.2016 u/s 420/468/471 PPC was registered against the petitioner. On conclusion of trial, the petitioner was though acquitted of the charges in said case, however, the vehicle was confiscated to the State vide judgment dated 26.6.2016. The said judgment was challenged by petitioner before the learned Appellate Court through a criminal appeal, which was dismissed by the learned Additional Sessions Judge vide order dated 09.10.2019, hence, this petition.

**Cr.M 80-M/2019**

On 25.7.2019, IHC Adnan, Anti-Car Lifting Cell, Swat alongwith other constables were present at spot in connection with checking of stolen vehicles. In the meanwhile, NCP V8 Jeep having Chassis No.URJ202-4105110, Engine No.UR054461, Model 2015, being driven by petitioner, was intercepted with aim of checking. Upon checking, after finding that



against same chassis number another vehicle is registered at Islamabad with registration No.AEH-444, whereas the number plate affixed on it denoting same as NCP vehicle is bogus. Thus, the vehicle was taken into possession vide daily diary No.40 under sections 523/550 Cr.P.C. During the ensuring inquiry u/s 156 (3) the vehicle was examined through FSL, report whereof, reveals that though its chassis number before and after chemical examination is same, however, it was found that same was '*cut and welded chassis frame and also welded and refitted chassis number*', hence, case FIR No. 987 dated 11.11.2019 u/s 420/468/471 PPC at Police Station *Mingora*, District Swat was registered against one Ahmad Ali. The request of petitioner for return of vehicle in question has been refused by both the learned Courts below, hence, this petition.

**Cr.M 3-M/2020**


On 01.9.2019, Tauheed Khan SHO alongwith other police officials during snap checking, after finding it suspicious vide daily diary No.13



took into possession vehicle i.e. Datsun bearing Registration No.AL-3955 Chassis No.LN85-01005220 Engine No.2L-2519787, Model 1992, coming from *Droshkhela* side and being driven by petitioner Muhammad Naseer, and an inquiry under sections 523/550/. During the ensuring inquiry 156 (3) it was found that it chassis number is tampered as before chemical examination it was 'LN85-0100520' while after examination it was found to be 'LN85-0001796' . The request of the petitioner for return of the vehicle in question has been concurrently declined by both the learned Courts below, hence, this petition.

**Cr.M 10-M/2020**

On 30.11.2019, IHC Rehmanullah alongwith other police officials, on suspicious stopped NCP vehicle i.e. Vigo No.UR-019 Chassis No.MROFZ29G5015 42959 and after finding that same chassis number is belonging to Vehicle No.CT-4490/Sindh, thus, the vehicle was taken into possession vide daily diary No.21 under




sections 523/550. During the ensuring inquiry, the vehicle was examined through FSL. According to FSL report, it was found that '*a forged chassis number MROFZ29G501542959 has been pasted with adhesive material was removed and the original chassis number became visible after chemical treatment as MROFZ290101540366*'. Hence, a case vide FIR No.01 dated 03.01.2020 u/s 417/420/465/471 PPC was registered against one Izhar Ali at Police Station *Besham*, District *Shangla*. The application of the petitioner for return of the vehicle in question has been turned down by both the learned Courts below, hence, this petition.

**Cr.M 11-M/2020**

On 25.9.2019, XLI motorcar bearing Registration No.LZS-2777 chassis LE120-0020721, Model 2005, white colour, being driven by petitioner, was stopped by police and after finding it suspicious, the same was taken into possession under sections 525/550 Cr.P.C. During the ensuring inquiry, the vehicle was examined through FSL,

according to report of FSL, the vehicle has '*welled and refitted chassis sheet*'. Hence, a case vide FIR No.720 dated 22.11.2019 u/s 420/468/471 PPC was registered against one Afzal Khan at Police Station *Kabal*, District Swat. The plea of the petitioner for return of the motorcar has been rejected by both the learned Courts below, hence, this petition.


**Cr.M 31-M/2020**



On 10.1.2020 NCP *Vitz* motorcar bearing chassis No.10-0111636, model 2000 silver colour, being driven by the petitioner, was intercepted for checking and after finding it suspicious, the same was taken into possession under sections 523/550 Cr.P.C vide daily diary No.10. During the ensuring inquiry u/s 156 (3) Cr.P.C, the vehicle was examined through FSL. Though, according to FSL report its chassis number before and after chemical treatment was found same, however, it was reported that it is '*welded and refitted full sheet*', hence, a case vide FIR 122 dated 419/420/468/471 PPC was registered against the petitioner at

Police Station *Charbagh*, District Swat. Prayer of the petitioner for return of the vehicle in question has been concurrently dismissed by the learned Courts below, hence, this petition.

**Cr.M 32-M/2020**



On 02.12.2019, Fielder motorcar (NCP) bearing chassis No.NZE-121-3355936, Engine No.1496CC, Model 2004/05 white colour was impounded by police under sections 523/550 PPC after finding it suspicious. During the ensuring inquiry u/s 156 (3) Cr.P.C, upon examination of the vehicle through FSL, its chassis number was found to be tampered by '*welding and refitting the chassis sheet*'. After refusing the custody of the vehicle in question by both the learned Courts below, the petitioner has now approached this Court for said relief.

**Cr.M 40-M/2020**

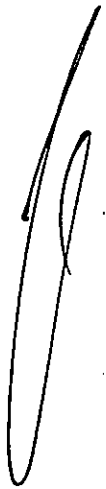
On 02.12.2019, IHC Noor Alam, Anti-Car Lifting Cell, Swat alongwith other *nafri* at the spot seized NCP Vehicle i.s. Datsun bearing Chassis No.JJ731-LN8508

004699, Model 1991, white colour and after finding it suspicious was taken into possession under sections 523/550 Cr.P.C. During the ensuring probe u/s 156 (3) Cr.P.C, the vehicle was examined through FSL and according to FSL report *'the original chassis number has been completely grinded, rubbed off and not decipherable. The present chassis number is re-stamped one.'*, hence, a case vide FIR No.52 dated 13.2.2020 was registered u/s 420/468/471 PPC at Police Station Mingora, District Swat against one Ziaullah. Request of the petitioner for return of the vehicle in question has been declined by both the learned Courts below, hence, this petition.

**Cr.M 49-M/2020**

On 28.2.2020, during *nakabandi* at the spot, NCP motorcar (Toyoto Altas) bearing Chassis NO.MRO053R EE104158169, Engine No.1598CC, Model 2012 after finding it suspicious was seized by Fahim Khan ASI under sections 523/550 Cr.P.C. During the ensuring inquiry, upon examination of the vehicle through FSL, it was

found that it is a '*welled & refitted chassis sheets piece*', hence, a case vide FIR No.1297 dated 05.7.2020 under section 420/468/471 PPC was registered against one Muhammad Qayum at Police Station *Ghalegay*, District Swat. Both the learned Courts below have concurrently refused return of the vehicle in question to the petitioner, hence, this petition.



3. Learned counsel for the petitioners, *inter alia*, contended that that both the learned Courts below have wrongly dismissed applications of the petitioners for return of their respective vehicles because they were *bona fide* purchasers of the vehicles in question and there was no evidence on record which could have been shown that either the vehicles were stolen property or ever used in any crime. They also argued that the respective petitioners had no role whatsoever in tampering, welding, re-fitting, re-stamping of chassis plates thereof, hence, they could not be refused the custody

of their vehicles. They also contended that the vehicles were parked in the respective police stations without any protection, shed etc and were therefore exposed to damage and decay. They further contended that there were apprehensions of misuse of the vehicles in question while in custody of the police. They maintained that *prima facie mens rea* of the petitioners regarding the alleged tampering etc of the chassis numbers of the vehicles in question were not available on the record, therefore, they could not be deprived of their validly purchased property. They also added that the F.S.L reports could not be relied upon particularly in the circumstances when none of the petitioners has been associated with, or even issued a notice of the date & time of chemical examination of the vehicles. They further submitted that the impugned orders may be quashed and the vehicles in questions be returned to the petitioners on *superdari*.

4. On the other hand, learned A.A.G representing the State contended that chassis plates of all the vehicles in question were tampered, these have therefore been rightly seized by the police. He further contended that such like tampered vehicles were being frequently used in terrorist activities and other heinous crimes. He added that it was a normal practice in this country that on a single *superdari* order of the Court qua one tampered vehicle, several vehicles were plying on the roads without any proper checking, which practice may only be curbed by discouraging *superdari* of tampered vehicles. He also contended that as all petitioners have been pleading innocence and ignorance in purchase of the vehicles from other persons. So, they could knock the doors of the civil Courts against the vendors for committing fraud, by selling them tampered vehicles in consideration of handsome amounts. The ground of their *bona fide*



purchase of vehicles would not however entitle them to return of the tampered vehicles. Plying of these illegal vehicles on the road were not justified and its leaving to ply on the roads would amount to issue them a license for landing illegal vehicles on the roads. He also argued that chassis numbers of most of the vehicles in questions have been matching with other registered vehicles, thus, the factum of tampering the chassis numbers of the vehicles in question cannot be ruled out. He accordingly requested for dismissal of these petitions.


5. Arguments heard and record gone through.

6. Be that as it may, all the petitioners may be owners of their respective vehicles on the basis of *bona fide* purchases through agreements/bargain receipts and at the most there would be no rival claimant of the vehicles in question, however, all the vehicles were allegedly seized by the police

under sections 523/550 Cr.P.C and during inquiry u/s 156 (3) Cr.P.C. The chassis plates of all the vehicles in question were found tampered, welded, refitted or re-stamped, not decipherable for the reasons of rubbing off its chassis plates etc according to the respective reports of the F.S.L. At this juncture, presumption of truth is attached to the F.S.L reports. Besides, certain other vehicles are also plying on road having same chassis numbers in most of the cases. Thus, the question arises whether such vehicles which are having tampered, re-stamped, welded or refitted chassis plates can be allowed to ply on the roads?. The answer is obviously 'no', since the law on the subject does not permit the same, therefore, in firm view of this Court; the arguments advanced by learned A.A.G in this regard were carrying substantial weight. Reliance may also be placed here on the case of 'Ch. Maqbool Ahmed Vs. Customs, Federal Excise and Sales Tax, Appellate Tribunal and

3 others' (2009 SCMR 226), wherein it has been held that:

Smuggled vehicle with proved tampered chassis frame and not a smuggled vehicle with non-tampered chassis frame---Held, outright confiscation of the vehicle through order-in-original under Cl.(89) of S.156(1) of the Customs Act, 1969 read with S.R.O. No.574(I)/2005 dated 6-6-2005 was lawfully passed and did not suffer from any illegality---Petition for leave to appeal against judgment of the High Court upholding said order was dismissed."



Similar view has also been adopted by this Court in the case of 'Ali Bahadar Vs. Toyota Indus Motor Company LTD. through Chief Executive/Managing Director and 03 others' (2019 YLR 622, Peshawar), wherein it has been held that:

"5. With regard to entitlement of petitioner for custody of the vehicle, suffice to say that though according to Registration Authority, registration number of the vehicle in question is genuine, however, as per FSL report, its chassis number has been found deciphered. In this view of the matter, we, are not inclined to hand over custody of the vehicle in question to the petitioner, as it will amount to issuance of a license by the Court for plying a tampered and un-authorized vehicle on road."

7. It would be relevant to mention here that some of the vehicles in question though are registered with different Excise & Taxation Offices, however, after the alleged purchase by the petitioners, most of them have not so far been transferred in the names of the petitioners. Section 23 of the Motor Vehicle Ordinance, 1965 restricts use of the vehicle which is either not registered/transferred by the owner in a specified period of time from the date of its purchase. For ready reference section 23 *ibid* is reproduced as under:

"23. (1) No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any place unless the vehicle is registered in accordance with this Chapter and the vehicle carries a registration mark displayed in the prescribed manner.

**Explanation:** A motor vehicle shall not be deemed to be registered in accordance with this chapter if the certificate of registration has been suspended or cancelled.

(2) Nothing in this section shall apply to a motor vehicle while being driven within the limits of jurisdiction of a registering authority to or from the appropriate place of registration for the purpose of being registered under sections 24, 26, 40 or 41 or to a motor vehicle exempted from the provisions of this

Chapter while in the possession of a dealer in motor vehicles.

Section 32 of the ibid Ordinance

is reproduced as under:

"32. (1) Within thirty days of the transfer of ownership of any motor vehicle registered under this Chapter, the transferee shall report the transfer to the registering authority within whose jurisdiction he ordinarily resides and shall forward the certificate of registration of the vehicle to that registering authority together with the prescribed fee in order that particulars of the transfer of ownership may be entered therein."

(2) A registering authority other than the original registering authority making any such entry shall communicate the transfer of ownership to the original registering authority."

In light of the above referred law, every owner is bound to transfer the vehicle within 30 days of its purchase. However, in none of these cases pertaining to registered vehicles, the law has been followed. It has also been observed that this provision of law is not normally followed by a lot of people in the country. Even the concerned authorities are also not taking care of the same, which subsequently creates troublesome issues for the owners of the vehicles as well as the

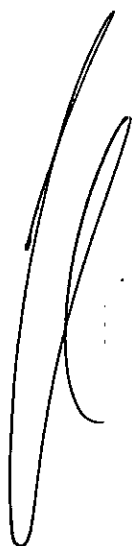
concerned authorities. Thus, the concerned authorities in order to minimize the problems of majority of people are also directed to strictly adhere to the aforesaid provisions of law in accordance with prescribed manner. Moreover, according to section 33 of the *ibid* Ordinance, any alteration effected in the vehicle is required to be reported within 14 days to the authority in whose jurisdiction the owner resided and the authority is required to issue a certificate of registration of the altered vehicle to the concerned authority where such alteration has to be entered into, however, no such question would be under consideration in any of these petitions.

8. This Court is also conscious of the fact that certain vehicles amongst the vehicles in question are Non-Custom-Paid (NCP). Indeed, any vehicle, which is imported into Pakistan, *inter alia*, is identified through its chassis and engine numbers besides colour and model and thus is accordingly registered on the basis of the import documents.

9. It would not be out of place to mention here that plying of Non-Custom Paid (NCP) vehicles in this part of the province due to certain exemptions, is not illegal, however, *superdari* of the NCP vehicle having tampered, welded, refitted or re-stamped chassis plate would be considered on the same touchstone as that of the custom paid/registered vehicles in light of the observations recorded herein above in this order.

10. So far as the contention of learned counsels for the petitioners that the petitioners are *bona fide* purchasers of the vehicles is concerned, suffice it to note that on the basis of terms and conditions in their agreements with the sellers of the vehicles in question, the petitioners would be at liberty to approach the proper forum for redressal of their legal rights against the persons from whom they had purchased the vehicles, if so advised. The request of custody of vehicle

having welded and refitted chassis frame has recently been declined by the apex Court in case of 'Government of Khyber Pakhtunkhwa through Secretary Excise and Taxation Department Civil Secretariat, Peshawar and others Vs. Sarfraz Khan and another' (2020 SCMR 1410) by holding that:




"Welded and refitted chassis frame--- Excise and taxation department seized the subject vehicle as on forensic examination it was found to have a welded and refitted chassis frame--- High Court set-aside the seizure order and directed the department to hand over the vehicle to the respondent (owner)---Held, that S. 33 of the Provincial Motor Vehicles Ordinance, 1965 did not distinguish alteration in the motor vehicles in any manner whatsoever---Any alteration effected in the vehicle was required to be reported within 14 days to the authority in whose jurisdiction the owner resided and the authority was required to issue a certificate of registration of the subject vehicle to the concerned authority where such alteration had to be entered into---No such exercise was undertaken in the present case--- Respondent conceded that such alteration was not carried out by him but by the person from whom he had purchased the vehicle---Liability and responsibility vested on the person making such alteration in any manner whatsoever---If the respondent had purchased the vehicle without taking due care and complying with the requirements of law, he could not claim to be a bona fide purchaser--- Respondent could claim damages from the person from whom he purchased the subject vehicle---Petition for leave to appeal was converted into appeal and allowed and impugned order of High Court was set aside."



11. It is necessary to note here that upon completion of inquiry/investigation in the matter and examination of the vehicle through F.S.L, the police complete its job. Meaning to say that police is not required to find out that who has tampered the vehicle because it is not the act of an ordinary person and the purchaser is required to take due care at the time of purchase of the vehicle.

12. In view of the above, the impugned orders are based on correct and legal observations of the learned Courts below, to which no exception can be taken. Resultantly, all these petitions are meritless, which are accordingly dismissed. If any vehicle (s) amongst aforesaid questioned vehicles is/are already returned to any person (s) on any order (s) of the learned lower Courts, the same shall be forthwith seized by the police/concerned authorities. All the vehicles in question shall be parked in the State warehouse against proper receipt and

shall not be used by anyone. If any Government official or any other unauthorized person is found in using of any such like seized vehicle, he (the official) would be liable for departmental proceedings as well as under the relevant provisions of the Pakistan Penal Code and Anti-Corruption Laws.



**13.** In these cases, certain objections raised by the learned counsels for the petitioners (though may not be having any leg to stand on), however, in order to remove any flaw in process of inquiry and for satisfaction of the owner/possessor of the vehicle, it is ordered that henceforth at the time of seizing of a vehicle by the police/concerned authorities, a photograph of vehicle and its chassis plate shall invariably be taken and same shall be annexed with the recovery memo/inventory memo. Any recovery memo whereby vehicle is seized being not accompanied with such a photograph, the

concerned Judicial Magistrate may not permit inquiry into the matter u/s 156 (3) Cr.P.C. The office is directed to communicate a copy of this order to all the District & Sessions Judges of *Malakand* Division for circulation amongst the Judicial Magistrates.

Announced  
28.09.2020

  
JUDGE

Office  
22/10  
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