

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Sardar Tariq Masood
Mr. Justice Syed Mansoor Ali Shah

Criminal Petition No.74-L of 2018

(on appeal from the judgment of the Lahore High Court, Lahore dated 30.10.2017, passed in CrI.A No.146/2016 & WP No.33366/2016)

Amjad Ali Khan

.....Petitioner

Versus

The State, etc

.....Respondents

For the petitioner: Sardar Khurram Latif Khan Khosa, ASC.

For the State: Rana Abdul Majeed, Addl.P.G.
Mr. Wajeeh Ullah Kundi, Secy Excise Pb.
Mr. Suhail Shahzad, DG Excise, Pb.
Mian Latif ETO, Mianwali.
Mr. Bilal Azam, Director Excise ICT.
Mr. Sharif Gul, ETO, ICT.

Date of Hearing: 13.03.2020

ORDER

Syed Mansoor Ali Shah, J. Upon a spy-information, the Police conducted a raid by intercepting a vehicle, i.e., Toyota Corolla bearing registration No. UH 608 (the "Vehicle") and apprehended its two passengers. The Police allegedly recovered narcotics and weapons from the Vehicle, as well as, from the passengers. In this background a criminal case (FIR no. 397) was registered against the two passengers at Police Station Mustafabad, District Lahore on 20.08.2015 under the provisions of the Control of Narcotics Substances Act, 1997 (the "CNSA") and the Arms Ordinance, 1965. The Police also seized the Vehicle on the same day. According to the Report submitted before this Court by the Additional Sessions Judge, Lahore dated 24.11.2018, the trial of the case is pending adjudication and the Additional Prosecutor General has not stated otherwise.

2. Brief facts, pertaining to the instant matter, are that during trial, the petitioner, claiming himself to be the “owner” of the Vehicle and not being an accused in the case, submitted an application before the trial court on 20.11.2015 for release of the Vehicle to him on *superdari*. The petitioner asserted in the application that he was the owner of the Vehicle and if the Vehicle was not handed over to him he would suffer irreparable loss; besides, there was a probability that the Vehicle may suffer damage in the possession of the Police.

3. The trial court allowed the application for *superdari* vide order dated 18.12.2015 with the direction to hand over the custody of the Vehicle to the petitioner. The State challenged the order in appeal before the High Court. As the Vehicle had not been released, the petitioner also filed a writ petition praying that the Police be directed to hand over the Vehicle to him in compliance with the order of the trial court. The High Court allowed the appeal of the State and dismissed the writ petition filed by the petitioner vide impugned consolidated Order dated 30.10.2017, on the ground that the petitioner could not establish his ownership of the Vehicle on the basis of an open transfer letter. Learned counsel for the petitioner has pointed out, that the Vehicle was subsequently registered in the name of the petitioner by the relevant Authority on 21.01.2016. Admittedly, the registration of the Vehicle in favour of the petitioner has been made after the commission of the offence; the seizure of the Vehicle by the Police; and the registration of the criminal case.

4. We have heard the learned counsel for the parties, gone through the record of the case, considered the submissions of the officials of the Motor Registration Authority (“Authority”) and examined the relevant law.

5. This case brings up for determination two distinct yet interconnected legal issues. First, whether a vehicle involved in the

commission of an offence under CNSA, after being seized by the Police and put up before the court as case property, can be temporarily released on *superdari*? And second, whether a vehicle that has been seized and is a case property in a criminal case under the Act can be transferred and registered in the name of a third party by the Authority under the Motor Vehicles Ordinance, 1965 (the "MVO") till the conclusion of the trial and the final disposal or confiscation of the vehicle by the court?

A. Release of Vehicle (Case Property) on Superdari under CNSA

6. Under the scheme of general criminal law, a vehicle seized by the Police and having become case property, can be released on custody (*superdari*), during the trial, under sections 516-A or an order be made for its disposal to the person entitled to its possession by the Magistrate under section 523 of the Cr.P.C. Things are, however, different under the CNSA which does not envisage release of a conveyance (vehicle, etc.) during the trial, except as provided in the proviso to section 32(2) and 74 of CNSA. Examining the scheme of the Act, we note that section 32 deals with Articles connected with narcotics in the following manner:-

32. Articles connected with narcotics.---(1) Whenever any offence has been committed which is punishable under this Act, the narcotic drug, psychotropic substance or controlled substance, materials, apparatus and utensils in respect of which, or by means of which, such offence has been committed shall be liable to confiscation.

(2) Any narcotic drug, psychotropic substance or controlled substance lawfully imported, transported, manufactured, possessed, or sold alongwith, or in addition to, any narcotic drug, psychotropic substance or controlled substance which is liable to confiscation under sub-section (1) and the receptacles or packages, and the vehicles, vessels and other conveyances used in carrying such drugs and substances shall likewise be liable to confiscation:

Provided that no vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that the owner thereof knew that the offence was being, or was to be, committed.

7. The word "narcotics" in the title of the section refers to narcotic drugs, psychotropic substance or controlled substance in

respect of which an offence has been committed under the CNSA (hereinafter referred to as "narcotics"). Sub-section (1) of section 32 provides that any narcotics or materials, apparatus and utensils in respect of which or by means of which an offence punishable under CNSA has been committed shall be liable to confiscation. It is pointed out that section 32(1) does not refer to any conveyance including a vehicle used in the commission of the offence. Sub-section 2 of section 32 deals with articles, which are connected with narcotics; These articles are (i) narcotic drug, psychotropic substance or controlled substance lawfully imported, transported, manufactured, possessed or sold (for convenience referred to as "lawful drugs and substances" as compared to "narcotics" mentioned above) alongwith or in addition to, any narcotics and articles like of (ii) receptacles or packages, and the vehicles, vessels and other conveyances used in carrying such drugs and substances. Both the set of articles mentioned in (i) & (ii) above are liable to confiscation. Therefore, vehicles, vessels and other conveyances are liable to confiscation if they are used in carrying both narcotics or narcotics alongwith lawful drugs and substances.

8. We wish to point out that at first blush, reading of section 32(2) does create an impression that the vehicles, vessels and other conveyances liable to confiscation are only those which are used in carrying joint category of narcotics and lawful drugs and substance. However, a more holistic reading of the provision shows that it would be absurd to imagine that only vehicles, vessels and other conveyances carrying joint category of narcotics and lawful drugs and substances are liable to confiscation, while vehicles, vessels and other conveyances carrying narcotics alone are not liable to confiscation. Therefore, the second set of articles connected with narcotics i.e., vehicles, vessels and other conveyances are liable to confiscation irrespective whether that are used in carrying narcotics alone or joint category of narcotics and lawful drugs and substance.

9. The proviso to section 32 excludes certain vehicles, vessels and other conveyances from being liable to confiscation. According to the proviso unless it is proved that the owner of the vehicles, vessels and other conveyances knew that the offence was being or was to be committed, the vehicles, vessels and other conveyances are not liable to confiscation.

10. This view is further strengthened by the proviso to section 74 of CNSA, which provides:

74. Application of other laws. If an offence punishable under this Act, is also an offence in any other law for the time being in force, nothing in that law shall prevent the offender from being punished under this Act:

Provided that nothing contained in Section 523 of the Code of Criminal Procedure, 1898 (Act V of 1898), or any other provision of the said Code or any other law for time being in force, the custody of narcotic drugs, psychotropic substances, controlled substances, any material utensils used for production or manufacture of such drugs or substances or any conveyance used in import, export, transport or transshipment thereof or for commission of an offence under this Act, shall not be given on custody to the accused or any of his associate or relative or any private individual till the conclusion of the case except as provided in the second proviso to subsection (2) of section 33.

Under the proviso to section 74 of CNSA, the provisions of Cr.P.C to the extent of custody and disposal of a conveyance under general law are not applicable under CNSA. A vehicle used in the commission of an offence under CNSA cannot be released or given on custody (*superdari*) to the accused or any of his associate or relative or any private individual till the conclusion of the case. The terms "associate" and "relative" have been defined in clauses (b) and (z-b) of section 2 of CNSA, and the expression "any private individual" used in the proviso to section 74 has been explained by this Court in the case of *Allah Ditta*¹ to be an individual who has some nexus with the offender or the offence.

11. Joint reading of sections 32 and 74 of CNSA show that an applicant can seek release of a vehicle on *superdari*, which has been seized under CNSA and is a case property in a criminal case; if the applicant can show that he is the lawful owner of the vehicle; that he is neither the accused nor an associate or a relative of the

¹ *Allah Ditta v. The State*, 2010 SCMR 1181

accused or an individual having any nexus with the accused. While the prosecution has to show that the applicant knew that the offence was being or was to be committed. See *Allah Ditta*². Under section 33 if the vehicle is finally held not liable to confiscation it can be released to its owner. As a corollary, where the court can pass a final order, it can also pass an interim order. See *Abdul Salam*³. Therefore, a vehicle can also be released as an interim measure or temporarily on *superdari* under CNSA after the court is *prime facie* satisfied regarding the ownership of the applicant and the absence of the association of the owner with the accused and the commission of the offence. The applicant while asserting his ownership of the vehicle must specify in his application for *superdari* how he was deprived of the vehicle, how and when he found out that his vehicle was missing, and the legal proceedings initiated by him thereafter, if any. This becomes important in the light of section 109 of MVO which attracts criminal liability if one drives a vehicle without the consent of the owner. On the other hand, in order to oppose the release of vehicle on *superdari*, the prosecution has to *prima facie* show from the record that the owner knew that the offence was being or was to be, committed. It is underlined that it is during the trial that the prosecution has to prove that the owner knew that the offence was being or was to be, committed.

12. Coming to the facts of the present case, the first and the foremost condition is that the petitioner must be the "owner" of the vehicle. "Owner" is defined in section 2(24) of MVO to mean a person in whose name the motor vehicle is registered and includes the transferee. Transferee must be duly registered under MVO. In the present case, the petitioner moved an application for seeking *superdari* of the Vehicle on 20.11.2015, described himself as the owner of the Vehicle, but at the time, he only had an open transfer

² *ibid*

³ *Abdul Salam v. The State*, 2003 SCMR 246

letter. An open transfer letter is not a valid document of title⁴ and it does not transfer ownership of a vehicle in terms of MVO. Subsequently, the Vehicle was duly registered in the name of the petitioner on 21.01.2016. This was too late as at the time of alleged commission of the offence, the seizure of the Vehicle and the registration of the criminal case on 20.08.2015 the petitioner was not the owner of the Vehicle. An applicant must be the owner of the vehicle prior to the commission of the offence. The registration certificate of the Vehicle shows that the original owner of the Vehicle was Muslim Khan, who sold the Vehicle to Asif Kamal and then finally the Vehicle was transferred in the name of the petitioner on 21.01.2016. Asif Kamal, was the owner of the vehicle at the time of the offence, but did not approach the court to seek release of the Vehicle. On 20.08.2015, when the petitioner made application for *superdari* of the Vehicle, he was not the owner of the Vehicle and, therefore, does not pass the requirement laid down in proviso to section 32 of CNSA.

13. Further, the petitioner did not assert a word, in the application, to show that he was not an associate or relative of the accused or an individual having any nexus with the accused or the offence. His failure to explain how the Vehicle, whose ownership he claims, had gone into the possession and use of the accused was fatal to his prayer for *superdari* of the same. As the petitioner has failed to establish his ownership of the Vehicle, we see no reason to burden the prosecution to show if the petitioner was aware of the commission of the offence. The application made for release of the Vehicle by the petitioner was, therefore, not maintainable, and was wrongly allowed by the trial court.

B. Transfer of ownership of a seized vehicle and its registration under the Ordinance

14. The Vehicle was registered in the name of the petitioner by the Motor Registration Authority under MVO when the Vehicle had

⁴ See *Sameen Khan v. The State*, 2016 P.Cr.L.J. (Notes) 120; *Razik Hussain v. Additional District and Sessions Judge-V and 2 others*, 2015 YLR 2271; *Ghulam Yasin v. The State and 3 others*, 2014 MLD 90.

already been seized by the Police and had become case property in a criminal case, hence becoming liable to confiscation under CNSA. As a result the disposal of the vehicle comes under the control of the court and the owner stands cautioned not to deal or transact with the title of the vehicle till the conclusion of the trial. Infact there is a freeze on the legal title of the owner of the vehicle till the conclusion of the trial. The rationale behind this being that any transfer or change in the title of the vehicle (case property) would undermine the safe administration of criminal justice system; as any such transfer (registration of the vehicle in the name of a third party) would amount to interference in the powers of the criminal court and in eroding the sanctity and security of the evidence in an ongoing criminal trial. Therefore, transfer of ownership of the Vehicle by the Motor Registration Authority on 21.01.2016 was not permissible and is, therefore, without lawful authority.

15. Section 23 of MVO provides that no person shall drive a vehicle or no owner shall permit the vehicle to be driven in any place unless the vehicle is registered in accordance with provisions of MVO. Section 27 requires physical production of the vehicle before the Authority or any authority as the Government may appoint for this purpose, in order that the Authority is satisfied that the particulars contained in the application are true and the vehicle complies with the requirements of Chapter VI and of the Rules thereunder. Physical verification of the vehicle prior to registration has many advantages. First, it helps the registering authority verify that the vehicle being registered is the same as mentioned in the application form (Form F), e.g. class of vehicle, type of body, maker's name, year of manufacture, etc. Second, it confirms that the vehicle physically exists at the time of registration and thirdly, the owner is in lawful possession of the vehicle (moveable property). Section 32 provides for transfer of ownership in favour of a subsequent transferee. We see no reason why the process of registration of a vehicle provided under section 27 be any different for the vehicle being registered subsequently in

the name of a new transferee and for any further transfers. The importance of physical verification remains equally important in subsequent transfers, as has come to surface in the instant case, where a vehicle allegedly involved in the commission of a crime, which had been seized by the police and was a case property in a criminal case, yet it was registered in the name of the petitioner on the basis of wrongful assumption that the transferor holds an absolute legal title of the Vehicle and is in lawful possession of the same. The application for registration (Form F) or the application for transfer of ownership, rests upon a fundamental assumption that the vehicle is in lawful ownership and possession of the owner of the vehicle. In order to effectively regulate the vehicles under MVO, physical verification of the vehicle at the time of registration and its subsequent registration is critical and is also in the public interest besides advancing the purposes of MVO. Physical verification of the vehicle also helps actualize sections 34 and 35 of MVO dealing with suspension and cancellation of registration of the vehicle. We, therefore, hold that the requirement of section 27 regarding physical verification of the vehicle prior to registration is an essential requirement and is fully applicable to subsequent registrations of vehicles under section 32 of MVO. We, therefore, refer the matter relating to the registration of the Vehicle in favour of the petitioner dated 21.01.2016 to the concerned Motor Registration Authority for necessary action under the law.

Direction to the Government, Motor Registration Authority and the Police.

16. We deem it appropriate to direct the Provincial Government, and Chief Commissioner, ICT to consider amendment(s) in MVO and the Rules thereunder to prevent registration of vehicles involved in the commission of crime as discussed above. In addition, the Provincial Governments and ICT may consider that the Motor Registration Authority and the Police develop an online verification system to identify vehicles involved in the commission of crime. The transferor/transferee at the time of registration of the

vehicle may be required to obtain a No Objection Certificate from the Police or to submit an Affidavit to the effect that the vehicle is not involved in any criminal case.

17. For what has been discussed above we find that the order of the trial court whereby the petitioner had been allowed *superdari* of the Vehicle was not sustainable under the law and was, therefore, rightly set aside by the High Court. We uphold the impugned order, decline leave and dismiss this petition, with the above direction to the Provincial Governments and ICT, Motor Registration Authority and the Police. The Deputy Registrar of this Court at the Lahore Branch Registry shall send copy of this order to the Secretaries, Excise & Taxation Department of all the Provincial Governments and Director, Excise & Taxation Department, ICT, as well as, Inspectors General Police of the respective Governments, for information and appropriate action at their end. These are the reasons for our short order dated 13.03.2020.

Judge

Judge

Lahore,
13th March, 2020.
Approved for reporting
M.Farhan

Judge