

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE YAHYA AFRIDI

CIVIL PETITION NO.800-P OF 2019

(Against the order dated 14.11.2019 passed by
Peshawar High Court, Peshawar, in W.P.362-
P/2019)

Government of KPK through Secretary Excise &
Taxation Department, Civil Secretariat, Peshawar and
others

...Petitioner(s)

VERSUS

Sarfaraz Khan and another

...Respondent(s)

For the Petitioner(s): Malik Akhtar Hussain, Addl.AG KPK

On Court's Notice: Syed Hamad Ali Shah, Legal Officer KP
Excise Dept.
Mr. Shakil Ahmed, Inspector Motor
Registration Authority Sargodha

For Respondent-1: In-person.

Date of Hearing: 28.05.2020

ORDER

MUSHIR ALAM, J.— The petitioners, Government of KPK through Secretary Excise & Taxation Department, Civil Secretariat, Peshawar and others, have impugned judgment dated 14.11.2019, passed by learned Division Bench of the Peshawar High Court, Peshawar, in W.P.362-P/2019, whereby the orders passed by the authorities seizing the subject vehicle were set aside.

2. Precise facts giving rise to the present controversy are that the subject vehicle bearing registration No.SGF-2992, Model No.1989, having Chassis No.LN85-0010554, was seized on

27.01.2017. On forensic examination, it was found “*welded and refitted chassis frame*”. This action was challenged by the Respondent No.1 before the learned Peshawar High Court and the learned High Court in consideration of the fact that the record has neither been called from the concerned Excise and Taxation Officer Sargodha nor have they directed the petitioner to produce the same before it and such exercise of the authority was not in accordance with law and the impugned action was held to be without lawful authority and jurisdiction and the subject vehicle was ordered to be handed over to the Respondent-1 herein.

3. Notice was issued to the respondent, who claim to be the owner of the subject vehicle as well as excise department Sargodha and the Investigating Officer of Police, Peshawar.

4. Officer concerned from the excise department appeared and produced original registration record of the subject vehicle. From the record, it appears that some alteration has been made in the vehicle and the Respondent claims that he has purchased the vehicle from Muhammad Yaqoob, whose name appears in the record at Page-38 of the Court file. However, the subject vehicle was seized on 27.01.2017 and during its seizure period, its ownership was transferred in the name of Respondent-1 on 04.02.2017. Therefore, the contention of the Respondent that he has purchased the vehicle from Muhammad Yaqoob is not borne out from the record. Even otherwise, under Section 33 of the Provincial Motor Vehicles Ordinance, 1965, applicable to both the Provinces of Khyber Pakhtunkhwa as well as Punjab, reads as follow:

“33. Alteration in motor vehicle.”*(1) If a motor vehicle is so altered that the particulars contained in the certificate of registration are no longer accurate, the owner of the vehicle shall within fourteen days of the making of any such alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration of the vehicle to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein*

Provided that it shall not be necessary to report any change in the unladen weight of the motor vehicle consequent on the addition or removal of fitting or accessories, if such change does not exceed two per cent of weight entered in certificate of registration.

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

Punjab Amendment

In Section 33, in subsection (1), for the words “entered therein” the words “updated in the record and shall issue a new certificate of registration and license number plates, if required” shall be inserted.”

5. In the Province of Punjab, Section 33 of the Ordinance was amended through the Provincial Motor Vehicle (Amendment) Act XLVIII of 2016, which requires that all such additions/alterations shall be updated in the record and shall issue a new certificate of registration and license number plates, if required. Respondent No.1 states Rule 33 (ibid) is applicable when there is a change carried out by replacing the chassis numbers and there are different modes of change and adjustment for the purpose of modification and he has not done any change. It may be observed that Section 33 (ibid) as reproduced above does not distinguish alteration in the motor vehicles in any manner whatsoever. Any alteration effected in the vehicle is required to be reported within 14 days to the authority in whose jurisdiction the

owner resides and the authority is required to issue a certificate of registration of the subject vehicle to the concerned authority where such alteration has to be entered into. In a case reported as Sultan Muhammad versus Collector Customs and another (2015 PTD 570) the question as to welding and refilled old chassis plate of the same vehicle amounts to altering of the original chassis number came up for consideration. Learned Bench after considering large number of cases in para-7 at page-586, opined (vi) & (viii) and at page-588 held:

- (vi) *“Tempering” of chassis number of the vehicle, include any alteration of the original chassis number of the vehicle, whether manual or otherwise OR cutting a piece of the frame and re-welding another piece thereon OR chassis number filled with welding material and then restamped.*
- (vii) *.....*
- (viii) *Tempering of chassis number as a result of an accident of the vehicle could only be a valid ground, if the same was reported to and confirmed by the Motor Vehicle Authorities under Section 33 of the Motor Vehicle Ordinance, 1965.*

.....

*Presenting documentation, relating to the said **“tampered”** vehicle from the Motor Vehicle Authority, without specific approval for the alteration in the chassis of engine number, as envisaged under section 33 of the Motor Vehicle Ordinance, 1965 (**“Ordinance”**) would be of no legal avail.*

*Moreover, allowing a vehicle, having **“tampered”** chassis number, even with registration book from the Motor Vehicle Authority, would surely offend and abuse the provisions of the Act/Ordinance and the Policy of the Federal Government reflected in*

*Circular No.10(1)AS/2004 dated 11-12-2007 read
with S.R.O. No.568(1)/2008, dated 11-6-2008.”*

6. No such exercise was undertaken. Respondent concedes that such alteration was not carried out by him but by the person from whom he has purchased the vehicle. The liability and responsibility vest on the person making such alteration in any manner whatsoever. If the Respondent has purchased the same without taking due care and complying with the requirements of law, he cannot claim to be a *bona fide* purchaser. Needless to say that he may, if so advised, claim damages from the person from whom he purchased the subject vehicle.

7. In view of what has been discussed above, the impugned judgment cannot be sustained. Accordingly, this petition is converted into appeal and allowed and the impugned judgment is set aside.

Judge

Judge

Judge

ISLAMABAD
11th May, 2020
Mudassar/★

“Approved for Reporting”