

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Revision Application No.S-146 of 2018

Date of hearing:	27.09.2019.
Date of decision:	27.09.2019
Applicant:	Ali Dino present in person.
The State	Through: Mr. Nazar Muhammad Memon, Addl. P.G.

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## J U D G M E N T

Applicant was booked in Crime No.10/2018, registered at P.S Mirwah Gorchani on 22.03.2018, u/s 411 PPC on the allegations that one stolen Suzuki Mehran Car, Engine No.410384, Chassis No.948893, Model 2007 was recovered from him from main road near Puran Mori, Taluka Shujaabad. On such allegations he was tried by Civil Judge & Judicial Magistrate-II, Kot Ghulam Muhammad and was returned guilty verdict vide judgment dated 29.06.2018, to suffer a sentence of three years. He filed an appeal against the said judgment bearing Criminal Appeal No.08/2018, which has been dismissed by the impugned judgment dated 30.07.2018, passed by Additional Sessions Judge-II, Mirpurkhas, upholding the conviction and sentence awarded to the applicant by the trial court.

2. I have heard the applicant in person as his counsel is called absent and learned Additional Prosecutor General Sindh and gone through the material available on record including the evidence of the witnesses. The record reflects that in the trial prosecution has examined as many as five (5) witnesses. None of the witnesses in his deposition has stated that the applicant knew that the alleged car recovered from him was stolen or he had a reason to believe that it was a stolen property. The case of alleged theft of the stolen car was registered at P.S Gulshan-e-Iqbal, East Karachi bearing Crime No.367/2011, u/s 381-A, PPC in the year 2011, whereas, the present case against the applicant was registered on 22.03.2018, which is almost after seven (7) years of such case and therefore, the important ingredient of immediate possession after theft to prove a charge of thief or retainer of stolen property is also not established. In this case only police witnesses have been cited and in their cross-examination they have admitted that they did not take any private person to witness the recovery from the applicant

although they had received prior information about the applicant having one stolen car in his possession.

4. In such circumstances, apparently the prosecution has not been able to establish the charge of retaining stolen property against applicant and this fact has not been properly appreciated by both the courts below in accordance with law. Both the courts below have completely ignored the fact that the prosecution was under obligation to establish knowledge of the applicant to be in possession of a stolen property and which the prosecution has not discharged. Non production of the relevant documents of the car at the time of recovery as alleged by the prosecution would not mean that the occupier of the car is a thief or retainer of stolen property unless such evidence establishing his knowledge or a reason tending to show his having such knowledge is brought on record. In the circumstances, when the prosecution has not been able to prove the charge against applicant beyond a shadow of doubt and he is entitled to its benefit.

5. Resultantly, this Criminal Revision Application is allowed and both the judgments dated 30.07.2018 and 29.06.2018, respectively, passed by the learned Additional Sessions Judge-II, Mirpurkhas and Civil Judge & Judicial Magistrate-II, Kot Ghulam Muhammad are set aside and the applicant is acquitted of the charge. He is on bail. His bail bonds are cancelled and surety discharged.

JUDGE

