

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc Application No. 01/2012

Muhammad Shahid Murtaza  
S/o Late S.M. Murtaza  
Male, Muslim, Adult,  
R/o 56/II, 25<sup>th</sup> Street,  
Khayaban-e-Mujahid,  
Phase-V DHA  
Karachi

PRESENTED

29-12-2012

D.R. (w/ct)  
for Dy. Registrar (Jud)  
3793

.... Applicant

## VERSUS

1) The State

2) M/s Warid Telecom Pvt Limited  
Through its Chief Executive,  
Having Principal Office at  
9<sup>th</sup> floor EFU House Jail Road,  
Lahore

..... Respondents

APPLICATION UNDER SECTION 561-A CR.P.C

Being aggrieved and dis-satisfied from the orders of VIth Judicial Magistrate at Karachi East dated 02.05.2012 Mrs. Zahida Parveen an order of Learned VIth Additional District and Sessions Judge at Karachi East dated 3-12-2012 dismissing the revision application of the applicant, the applicant prefers this Criminal Misc Application with a prayer that this Hon'ble court may be pleased to call for R & P of Criminal Revision No. 32/2012 from the court of VIth Additional Sessions Judge Karachi East and from the court of VITH Judicial Magistrate Karachi East and after perusal of the same, upon being satisfied to the illegality and irregularity of the order, may further be pleased to set-aside the same and order return of Honda Civic Car VTI Registration No.

(25)

1

**IN THE HIGH COURT OF SINDH, KARACHI**

Present: **Mr. Justice Mohammed Karim Khan Agha**

**Cr. Misc. Application No. 01/2013**

Muhammad Shahid Murtaza

V

The State & another

|                 |                                                                |
|-----------------|----------------------------------------------------------------|
| Date of hearing | 20.04.2016                                                     |
| Date of Order   | 20.04.2016                                                     |
| Applicant       | Through Khawaja Naveed Ahmed, advocate                         |
| Respondents     | Through Mr. Rajindar Kumar, Advocate and Mr. Zahoor Shah, APG. |

**ORDER**

**MOHAMMED KARIM KHAN AGHA, J.** The applicant through this criminal miscellaneous application under section 561-A Cr.P.C. attacked upon two impugned orders dated 02.05.2012 passed by learned VIth Judicial Magistrate, Karachi East in Misc. Application No.II/2011 and order dated 03.12.2012 passed by learned VIth Additional Sessions Judge, Karachi East in Criminal Revision No.32/2012 whereby the learned Magistrate handed over the disputed car to the respondent No.2 M/s Warid Telecom Pvt. Limited and the said order was upheld by the learned VIth Additional Sessions Judge, Karachi East.

2. In nut-shell the case of the applicant is that he was an employee of the respondent No.2 M/s Warid Telecom Pvt. Limited and during the course of his service he was provided with a company car. Thereafter the services of the applicant were terminated by respondent No.2 and the applicant kept

possession of the car because he was given the right to purchase the car on depreciated value.

3. According to the learned counsel for respondent No.2 the applicant had no right to keep the vehicle as it was owned by respondent No.2 M/s Warid Telecom Pvt. Limited and therefore respondent No.2 rightly demanded return of the same. In the meanwhile the applicant in August 2011 filed a civil suit for a decision that he was entitled to purchase the car. The suit was also defended by respondent No.2 and remains pending. During pendency of the civil suit on 06.9.2011 respondent No.2 lodged an FIR No.217/2011 under section 420 and 406 P.P.C. against the applicant at police station Bahadurabad, Karachi-East. Learned Magistrate in his order dated 17.10.2011 disposed of the case in "C" class. The respondent No.2 appealed this decision to this court which up held the decision which has now attained finality.

4. It appears that when the FIR was lodged the applicant wanted to cooperate with the police and handed the vehicle over to the I.O. which until that time had been in his possession. By order dated 2.5.2012 VIth Judicial Magistrate, Karachi East ordered that the vehicle be returned to the respondent No.2 as the FIR had been disposed of in "C" class notwithstanding the applicant's objections in this regard. The applicant filed II<sup>nd</sup> Revision Application and by impugned order dated 03.12.2012 the earlier order was up held whereby the car in dispute was to be handed over to respondent No.2.

✓✓

The applicant in these proceedings has challenged these impugned orders. According to the applicant the ownership of the vehicle could not have been decided in criminal proceedings and therefore the impugned orders should be set-aside.

5. On the other hand, learned counsel for respondent No.2 is of the view that the impugned orders should be maintained as the car is registered in the name of respondent No.2 and therefore respondent No.2 is the owner of the vehicle and is entitled to its return. In support of his contention he has placed reliance on the case of **Bashir Ahmed v. VIIIth Additional Sessions Judge, Hyderabad and two others** 2012 YLR 2718 (Sindh).

6. Learned State counsel while assisting this court was of the view that in criminal proceedings the ownership of the vehicle could not have been decided.

7. I have heard the learned counsel for the parties and perused the record.

8. It appears that there is a dispute between the applicant and the respondent regarding whether or not the applicant has a right to purchase the respondent's car which he wants to do and on account of this dispute the applicant initiated civil proceedings which are still pending. Thereafter respondent No.2 lodged the FIR mentioned above which was disposed of in "C" class and as a result of which through the impugned orders the vehicle was to be returned to respondent

No.2. In my view the case law cited by the learned counsel for the respondent is distinguishable as in the case relied on the FIR had been lodged but there was no civil suit pending. In this case civil proceedings had been initiated **before** lodging of the FIR which seems to have been filed after a delay of approximately 08 months for which there seems no adequate explanation. It appears that the lodging of the FIR which was disposed of in "C" class was a counter blast to the civil suit which was filed by the applicant. In any event I am of the view that in criminal proceedings filed under section 420 and 406 P.P.C. it was not for the Magistrate to determine the ownership of the vehicle which was already subjudice before the civil court. As such I hereby set-aside the impugned orders dated 02.05.2012 and 03.12.2012 and direct the learned Senior Civil Judge, Lahore via the Registrar of the Lahore High Court to determine the ownership of the vehicle within two months on receipt of this order in Suit No.543 of 2011 pending before Senior Civil Judge, Lahore. In the meanwhile respondent No.2 shall return the vehicle to the applicant who shall keep the same in good condition, not dispose of the same, not create any third party interest over the same and keep the same fully insured until the civil suit is decided by the learned Senior Civil Judge, Lahore.

9. Criminal Miscellaneous Application stands disposed of in the above terms.