

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
C. P. No. D-5672 of 2019

Date	Order with signature of Judge
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PRIORITY.

1. For orders on Misc. No.3331/2020.
2. For hearing of Misc. No.25063/2019.
3. For hearing of main case.

**Present:-**

**Mr. Justice Muhammad Ali Mazhar.**  
**Mr. Justice Yousuf Ali Sayeed.**

Naseem Akhtar.....Petitioner

Versus

Province of Sindh & others.....Respondents

**01.10.2020.**

Mr. Faisal Shahzad, advocate for the petitioner.  
Mr. Shahryar Mehar, AAG.  
None present for the respondents No.2 to 13.

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**Muhammad Ali Mazhar, J:** Vide this petition under Article 199 of the Constitution, the petitioner has essentially prayed for directions against the respondent No.7, who is a Sub-Inspector posted at Anti Car Lifting Cell (**ACLC**), for the return of a 2015 model Toyota Corolla car bearing registration No.BFM-276, which was apparently seized by said respondent on 25.07.2019 as having discrepant serial markings. Paragraph-07 of the comments filed by the respondent No.7 merits consideration and is reproduced as under:-

***“The real facts that on 25.07.2019 the undersigned (SIP Sajid Mustafa posted AVLC North Nazimabad Division Karachi, alongwith police***

*party were busy in checking of stolen vehicle as per direction of superiors, during checking the undersigned reached at opposite near Munawar Hospital and saw that a fancy number plat/suspect car bearing No.BFM-276 Maker Toyota Corolla Model 2015 was parked there in abandoned condition. That in the meantime a person namely Dr. Tariq was reached at spot and informed that he is owner of said car, and he had purchased car from Naseem Akhter, and the undersigned physically checked the above car in his presence and chassis No.4055393, was found punched & suspected and also "takkly" was forged. I undersigned seized above car u/s 550 Cr.P.C for FSL and directed above named person to produce original car file at Shareefabad ACLC Karachi. On same date he was reached at Shareefabad ACLC office met with the undersigned and produced the original documents of car, which found suspected and undersigned recorded his statement and recorded statement of owner of New Carwan Showroom namely Hashim Siraj s/o Abdul Hakeem Siraj. (Copies are herewith attached).*

*On 26.07.2019 during the enquiry the E/O sent above car for FSL. After FSL following opinion was disclosed through letter that:*

- (i) CHASSIS NO: The present chassis serial (NZE170R-4055393) is re-punched after erasing the original digits, which could not be deciphered due to deep grinding.*
- (ii) ENGINE NO: The present engine serial (Z362980) is re-punched after erasing the original digits, which could not be deciphered due to deep grinding (FSL letter copy is herewith attached).*
- (a) The original sales certificate and invoice sent for verification and concerned department (INDUS MOTOR COMPANY LTD), declared that the original sales certificate and invoice is found to be forged and not genuine. (Copy is herewith attached for kind perusal sir)."*

Learned counsel for the petitioner submitted that after custody of the vehicle being taken over under section 550 Cr.P.C, the petitioner had filed a Cr. Misc. Application bearing No.568/2019 under section 523

Cr.P.C before the learned IV-Judicial Magistrate, Karachi, Central, which was allowed vide order dated 09.01.2020 with it being directed that custody of the vehicle be handed over to him subject to furnishing of a P.R Bond in sum of Rs.15,00,000/-. He submitted that whilst a Cr. Revision Application bearing No.06/2020 was then filed against the aforementioned order dated 09.01.2020 before the learned IInd Additional Sessions Judge, Karachi, Central, by the respondent No.7, the same was dismissed as withdrawn on 07.02.2020, whereafter Cr. Revision No.08/2020 was filed by the State through the respondent No.7 before the same Court, and was allowed vide order dated 13.03.2020, with it being observed by the learned revisional Court in the concluding paragraph as under:-

***“On the perusal of record it appears that vehicle bearing registration No.LEA-16-1948, chassis No.NZE170R-4055393, engine No.Z362980, registered in the name of one Muhammad Afzal son of Muhammad Ali resident of Kasur, District Punjab is already available as per report of Excise and Taxation Department, Punjab whereas, the same chassis and engine numbers were punched on the vehicle in question and forged sales certificate and invoice were prepared and then it was got registered at Karachi with registration No.BFM-267. The reports submitted by office of the AIG Forensic Division Sindh, Karachi and Indus Motor Company Limited are available on record in this regard. As per report under section 550 Cr.P.C the vehicle in question was recovered from the possession of Dr. Tariq during checking. Accordingly respondent No.1 Naseem Akhter was neither last possessor, nor owner of the vehicle in question but the learned Magistrate did not consider these facts and allowed the application under section 523 Cr.P.C filed by the respondent No.1. Keeping in view the above facts and circumstances, the instant revision application is hereby allowed and impugned order dated 09.01.2020 passed by the IV-CJ & JM Karachi Central is hereby set aside.”***

Learned counsel for the petitioner submitted that the vehicle had been in the custody of one Dr. Tariq at the time of its seizure as he had purchased the same from the petitioner, but following the seizure he had then cancelled the agreement and the petitioner had thus come forward himself to claim custody. However, on query posed, he conceded that the vehicle was still in the name of its original owner, namely Farman Ali, son of Zulfiqar Ali, as reflected in the Sale Certificate said to have been issued by Indus Motor Company Limited.

At this juncture, the learned AAG pointed out that in the paragraph-07 of the comments of the Excise and Taxation Department (Respondent No.9), it had been stated as follows:-

***“In this regard, it is pertinent to submit for the kind perusal of this Honourable Court that the vehicle No.BFM-276 is one of the suspected vehicles identified by the F.I.A during the investigation against gang involved in selling of tempered vehicles vide enquiry No.8/2018. For that, an enquiry committee has also been constituted with the approval of the Competent Authority vide Enquiry Order No: SO (TAXES) E & T/5(32)2019(FIA)/1516 dated 21.6.2019. The report of said Enquiry Committee is still awaited and further necessary action will be taken as and when the report is finalized.***

***The enquiry committee has called the recorded owner Mr. Farman Ali, the Respondent No.10, to produce the said vehicle vide No.DD/MRA(NR-LOCAL)/ENQ/806(D) dated 05.8.2019 so that enquiry could be finalized, but having no response so far.”***

However, in paragraph-03 of the same comments, it has been admitted that according to the computer record, the vehicle Toyota Corolla model 2015 having chassis No.NZE170R-4055393, engine No.Z362980 was registered on 30.03.2016 in the name of Farman Ali son of Zulfiqar Ali (respondent No.10).

Under the circumstances, it appears that various disputed questions of fact have been raised with regard to the chassis and engine numbers, and Indus Motor Company Limited has also given a report in the negative. Needless to say, these type of questions cannot be decided in the writ jurisdiction and an appropriate remedy is available to the petitioner to approach the civil court for clearance of his title. Learned counsel for the petitioner, after arguing at some length, submits that the petitioner will avail the appropriate remedy available to him in accordance with law. As such the petition is disposed of accordingly, alongwith listed applications.

JUDGE

JUDGE

MUBASHIR