

# IN THE HIGH COURT OF SINDH AT KARACHI

## Cr. Misc. Appln. S. No.156 of 2017

Date of hearing : 12.03.2018

Date of Judgment/  
Announcement : 26.07.2018

Applicant : Mst. Huma Jameel  
through Mr. Haseeb-ur-Rahman,  
Advocate.

Respondent No.1 : Mst. Rabia Tariq Rizvi  
through Mr. Nisar Ahmed, Advocate.

Respondent No.2 : The Bank Islami Pakistan Limited.  
through Mr. Jamshed Qazi, Advocate.

Nemo : For respondents 2 to 3.

State : Through Mr. Nazeer Ahmed  
Bhangwar, A.P.G.

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### **ORDER**

**Muhammad Saleem Jessar, J.-** Through this Cr. Misc. Application the applicant Mst. Huma Jameel has challenged the Order dated 21.07.2017 passed by learned Vth Additional Sessions Judge, Karachi Central, whereby he dismissed Criminal Revision Application No.17/2017 filed by the applicant and maintaining the order dated 29.05.2017 passed by the Trial Court in Cr. Case No.482/2017 Re. State vs. Mst. Huma Jameel.

2. Precisely the relevant facts, as stated by the applicant in the instant Criminal Misc. Application, are that the applicant was tenant of deceased father of Respondent No.1. The applicant acquired a vehicle bearing registration No.ASB-151 on leasing from the Bank Islami Pakistan Limited, Respondent No.2 herein. After sometimes applicant intended to get another vehicle on leasing, however, as she had already obtained a vehicle on leasing, therefore, according to bank policy, she could not acquire second vehicle during the continuation of the first transaction. In the circumstances, the

applicant shared her problem with her landlord i.e. father of respondent No.1 namely Syed Tariq Ali Rizvi, who was kind enough to give a proposal that the second vehicle could be got in his name from the funds of the applicant which proposal was acted upon in the year 2014 and consequently second vehicle bearing registration BCE-151 was booked in the name of late Syed Tariq Ali. The applicant paid a sum of Rs.6,26,000/- as down payment to late Syed Tariq Ali which amount was subsequently deposited in the bank by him and in turn respondent bank vide Delivery Order dated 17.09.2014 possession of the vehicle in question was handed over to the applicant. Late Syed Tariq Ali also executed an authority letter in her favour thereby authorizing her to deal with the vehicle in question in all respects. Thereafter, the applicant regularly paid the installments to the bank through late Syed Tariq Ali, however, in the year 2015 Syed Tariq Ali passed away. Even thereafter, the applicant used to pay the installments in the form of cash directly to the bank within the stipulated time. After the death of said Syed Tariq Ali his first widow entered into a fresh tenancy agreement with the applicant and on expiry of the said agreement another tenancy agreement was executed between the applicant and respondent No.1 on 16.02.2017. In the month of February, 2017 respondent No.1, although having knowledge that the vehicle in question was owned by the applicant, raised an illegal and unjust demand for handing over the vehicle in question to her as the same was in the name of her deceased father. Applicant tried her level best to convince respondent No.1 that, in fact, the vehicle was owned by her and not by deceased father of respondent No.1, however, due to aforesaid technical problem the same was got registered in his name. However, respondent No.1 with malafide intention insisted on her illegal demand and on her failure, she moved a false application to S.H.O. Police Station Nazimabad for lodging of FIR against the applicant and after having failed to achieve her illegal goal, she got the FIR registered by moving application u/s 22-A Cr.P.C. After registration of FIR the vehicle was kept at the police station Nazimabad. Thereafter both (the applicant as well as respondent No.1) moved applications under Section 516-A Cr. P.C. before respondent No.4 i.e. XII-Judicial Magistrate, Karachi Central. In addition, the applicant also instituted Civil Suit No.217/2017 in the Court of XIth Senior Civil Judge Karachi Central in respect of the

said vehicle which is still pending. Learned Judicial Magistrate by a single order dated 29.05.2017 dismissed applicant's application and allowed application of respondent No.1. The applicant challenged the said order by filing aforesaid Cr. Revision Application wherein notices were issued to the respondents. However, despite the fact that copies of memo of the Criminal Revision and its annexures had been supplied in the office of learned Vth Additional Sessions Judge, Karachi Central, respondent No.1 claimed such copies on two dates of hearing and finally vide impugned order Respondent No.5 dismissed Cr. Revision application on account of non-supply of copies, hence this Cr. Misc. Application.

3. I have heard learned counsel for the parties and have gone through the material available on the record.

4. Learned counsel for the applicant contended that the impugned order has been passed in a hasty and mechanical manner without taking into consideration the factual as well as legal aspects of the case. He further contended that respondent No.5 i.e. learned Additional Sessions Judge did not take into consideration that the applicant had already supplied the copy of revision application a/w its annexures in the office which fact is evident from the notice issued to respondent wherein it is clearly mentioned that photocopy of revision application alongwith its annexures are annexed with the notice. He further contended that except the aforesaid ground, all other grounds taken on behalf of the applicant in the instant Cr. Misc. Application relate to the merits of the case which was dealt with by respondent No.4 i.e. XII-Judicial Magistrate Karachi Central and not by the appellate court whose order has been impugned in the present Cr. Misc. Application, as in the impugned order passed by the Respondent No.5 viz. V-Additional Sessions Judge, Karachi Central merits of the case were not, at all, touched and the Revision Application was dismissed on the sole ground of non-supply of memo of revision and its annexures to the respondent. However, he prayed for allowing instant Cr. Misc. Application and setting aside the impugned order. In support of his contentions learned counsel for the applicant relied upon case-law reported as *Syed Mustafa Alam Zaidi vs. The State* (1999 YLR 774), *Ghulam Hussain vs. The State and another* (1971 P.Cr.L.J 352), *Muhammad Mahfooz vs. The State* (1998

*P.Cr.L.J. 457), Mst. Shaheen Begum vs. S.H.O (ACLC) and others (2005 MLD 176), State vs. Zafaryaz and others (1999 YLR 2087), Din Muhammad and 5 others vs. The State (2005 YLR 816), Dewan Hashmat Hayat vs. The State and 3 others (2005 YLR 2864), Bhagmal vs. Himmat Khan and others (1985 P.Cr. L.J. 1175), Lal Wazir vs. Muhammad Zubair and another (2007 MLD 970), Ali Muhammad vs. Addl. Sessions Judge and others (2007 MLD 1096) and Mst. Nadira Naeem vs. Azizuddin and another (1997 P.Cr. L.J. 1006).*

5. Conversely, learned counsel for respondent No.1 supported the impugned order and contended that the same has been passed in accordance with law and it requires no interference by this Court. According to him, the vehicle in question was owned by deceased father of respondent No.1 and the applicant is adopting delaying tactics in order to linger on the litigation. He further contended that despite several opportunities awarded to the applicant, she miserably failed to supply the required copies, therefore, the revision was rightly dismissed by the appellate court. He prayed for dismissal of the instant Cr. Misc. Application and upholding the impugned order. In support of his contentions learned counsel for Respondent No1 relied upon case-law reported as *Muhammad Khan vs. Inayat and 3 others (2007 P.Cr.L.J 883 [Lahore]), Muhammad Sajjad vs. the State and others (2014 P.Cr.L.J 1733 [Lahore]), Nawab Ferozuddin vs. The State and 5 others (2009 MLD 94 [Karachi]), Usman Nasir Dar vs. The State (2009 SCMR 911), Muhammad Ramzan vs. Additional Sessions Judge, Faisalabad and 9 others (2009 P.Cr.L.J 1117 [Lahore]), Aziz Ur Rehman vs. Atiq Ur Rehman (2016 YLR 2413) and Republic Motors Ltd. vs. Muhammad Anwar and others (1980 SCMR 954).*

6. Leaned counsel for respondent No.2 also supported the impugned order. He contended that according to bank policy after the death of the person to whom the vehicle is given by the bank on leasing basis, only his legal heirs are authorized to contact the bank and proceed for further transaction. According to him, the vehicle was in the name of Syed Tariq Ali Rizvi i.e. deceased father of respondent No.1, therefore, the applicant was not authorized to deal with the transaction. He also prayed for dismissal of instant Cr. Misc. Application and maintaining the impugned order.

7. Learned A.P.G. appearing for the State, while adopting the arguments advanced by learned counsel for respondents No.1 and 2, supported the impugned order and contended that the same has been passed according to relevant law as such it does not call for any interference by this Court. He also prayed for dismissal of Cr. Misc. Application and maintaining the impugned order.

8. I have given due consideration to the arguments advanced by the learned counsel for respective parties and perused the record. It appears that the criminal revision application was dismissed by Vth Additional Session Judge Karachi Central on the sole ground of non-supply of copy of memo of revision application and its annexures to the respondents. The plea raised by the applicant in this respect was/is that she had already supplied the required copies in the office of the Appellate/Revisional Court and in support of her plea she referred to the notice issued to the respondents. A copy of the said notice dated 06.06.2017 is available at page-213 of the case file being Annexure L/10 to the Memo of Cr. Misc. Application. From the perusal of the said notice it transpires that the said notice was issued to respondents Nos.1, 2 and 3 herein. The contents of the notice indicate that alongwith the notice photocopy of revision application and its annexures were also annexed. It would be advantageous to reproduce hereunder the relevant portion from the notice:-

“SUBJECT:REVISION APPLICATION U/S: 439/A  
CR.P.C.

*Whereas in the above noted matter, Counsel for the Applicant filed subject mentioned application **(Photo copy a/w its annexure are annexed herewith)** which is fixed for hearing”.*

9. From above it is clear that the applicant had already supplied the copies of revision application as well as its annexures in the office of the concerned court as per prevailing practice, otherwise there was no fun in mentioning such fact in the notice issued to the respondents. Even otherwise, the Courts are under legal obligations to do complete justice as it is well settled principle of law that *Justice should not only be done but the same also seems to have been done*. It is also settled principle of law that the Courts should decide the matters/disputes on merits and not on the basis of technicalities

which should be avoided. The Courts should refrain from ousting any party from the proceedings on the basis of technicalities as it would amount to 'technical knockout'. In the case of **IMTIAZ AHMED VS. GHULAM ALI AND OTHERS (PLD 1963 S.C. 382)** Hon'ble Mr. Justice A.R. Cornelius, one of the members of a Full Bench of Honourable Supreme Court, while dealing with the effects of 'technicalities', observed as under :-

*"I must confess that having dealt with technicalities for more than forty years, out of which thirty years are at the Bar, I do not feel much impressed with them. I think the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on grounds of public policy. The English system of administration of justice on which our own is based may be to a certain extent technical but we are not to take from that system its defects. Any system which by giving effect to the form and not to the substance defeats substantive rights is defective to that extent. The ideal must always be a system that gives to every person what is his."*

10. In the instant case, it seems that the learned Additional Session Judge has passed the impugned order in a hasty, haphazard and mechanical manner purely on technical ground, without enquiring into the assertions made by the applicant that she had already supplied the required copies in the office of the Appellate/Revisional Court.

11. In view of aforesaid factual and legal position, it seems that the learned Additional District Judge has passed the impugned order in a hasty and mechanical manner without taking into consideration the relevant law and the principles laid down by the Superior Courts in that regard. With the result, the impugned order cannot be said to have been passed in accordance with the law and norms of justice, thus cannot be sustained in the eye of law. Consequently, instant Criminal Misc. Application is allowed, impugned order dated 21.7.2017 passed by Vth Additional Session Judge Karachi Central is set aside and the case is remanded back to the Court of Vth Additional Sessions Judge, Karachi Central with the direction to proceed with and decide the Criminal Revision Application

No.17/2017 filed by the applicant on merits. The parties are directed to appear in the Court of learned Vth Additional Sessions Judge, Karachi Central on **16.08.2018** when respondent No.1 would be supplied copy of the memo of revision alongwith its annexures by the office of the Appellate/Revisional Court after getting the same copied from the case file and acknowledgement of receipt in respect of such copies would be taken from respondent No.1 and such fact would be noted down in the case diary to avoid any further ambiguity. In order to save the vehicle from being ruined/perished, Respondent No.5 is directed to dispose of Cr. Revision Application within a period of Two months from the date of receipt of this order.

12. Since vehicle in question was ordered to be surrendered before Nazir of this Court vide order dated 06.12.2017 and as per his report dated 11.12.2017, vehicle in question bearing registration No.ASB-151 stood surrendered before him vide serial No. 6857. Therefore, the interim order dated 06.12.2017 shall remain operative till final decision of Revisional Court/Vth Additional Sessions Judge, Karachi (Central). The Criminal Revision Application bearing No. 17/2017 shall be deemed to be pending before Revisional Court as it was on 21.07.2017. After hearing the parties, learned Additional Sessions Judge, Karachi (Central) shall communicate the copy of final order to Nazir of this Court for compliance.

13. Accordingly, instant Cr. Misc. Application stands disposed of in the above terms. The copy of order be facsimiled to learned Vth Additional Sessions Judge, Karachi (Central) through MIT-II for compliance and early disposal of Criminal Revision Application.

JUDGE