

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Rev. Appln. No.D-91 of 2016

Present

Mr.Justice Khadim Hussain Tunio,
Mr.Justice Shamsuddin Abbasi.

(The State/ Anti-Narcotics Force vs Shamsher & another)

Applicant: The State/ Anti-Narcotics Force,
Through Mr. Muhammad Ayoub Kassar,
advocate.

Respondents No.1 Through Mr.Farhad Ali Abro, Advocate

Date of Hearing: 23.01.2019

Date of Decision: 12.02.2019

ORDER

SHAMSUDDIN ABBASI, J: Through this Criminal Revision Application, the applicant has impugned the order dated 02.12.2015 passed by the learned Sessions Judge, Shaheed Benazirabad in Criminal Misc.Application No.Nil of 2015, whereby the application filed by respondent No.1 for restoration of Toyota Corolla Car bearing No.BDX-489 white colour involved in Crime No.18 of 2015 of PS ANF Sukkur for the offence under Section 9(c) CNS Act, 1997, was allowed.

2. Concisely, the facts of the case are that on the relevant date time and place a raiding party consisting Inspector Ayaz Ahmed, HC Sher Muhammad and others of PS ANF Sukkur on Government vehicle alongwith informer under the supervision of Ali Brohi Incharge PS ANF Sukkur vide entry No.11 by 1230 hours left police station and reached at pointed place. Meanwhile, one Car Toyota Corolla bearing No.BDX 489 white colour was parked near the road

for which the informer told them the said car is same of Fazal Khan. Nobody was sitting on driver seat and saw one person sitting on the front seat. Thereafter, ANF party encircled the car and apprehended the person sitting on the front seat and during interrogation he disclosed his name as Dilsher son of Ameeruddin Rind by caste, r/o village Bahadur Khan Kaloi, Taluka Shahdadpur, District Sanghar. The complainant allegedly enquired from the arrested person regarding the driver Fazal Muhammad and Manshiat lying in the car to which he disclosed that the driver had gone to somewhere and had not yet returned and further shown ignorance regarding Manshiat. During search of the car they allegedly recovered 6 packets wrapped in the plastic lying under the driver seat which weighed on electronic scale which became one Kilogram each, total 6 kilograms. After that they separated 10/10 grams from each packet for chemical Analyses and sealed the same, remaining charas was sealed separately in white cloth. The arrested persons further disclosed that he is aged about 16 years and is student and had no concern with alleged charas. However, due to charas recovered from the car the applicant was arrested and on his personal search Rs.750/-the mashirnama was allegedly prepared at the spot. Afterward, they brought the car, substance allegedly recovered at P.S ANF Sukkur and lodged instant FIR. After usual investigation case was challaned. Respondent No.1 has moved an application for restoration of possession of said Car, which was allowed by learned trial court, hence this revision.

3. The learned counsel for the applicant / complainant has mainly contended that the Car in question was involved in a Narcotic case, which was an instrument to supply the Narcotics substances; that the role played for supplying the Narcotics through the Car in

question is against the society and in these days the offences of Narcotics are increasing day by day; that in order to avoid such offences in future, the owners of vehicles must be discouraged by denying the restoration of vehicles involved in Narcotic case rather the vehicles be confiscated; that the instant case is an strong one and there are chances of conviction of the accused and confiscation of car in question, therefore, the impugned order is not proper, justified and well-reasoned, which is liable to be reversed by this Honourable Court.

4. On the other hand learned counsel for the respondent No.1 argued that the trial court has rightly passed the impugned order by restoring the car to the respondent No.1; that the restoration of car in question is an interim measurement, the final outcome is still awaited which will be at the conclusion of trial and there are sufficient chances; that the car in question has been falsely implicated in the subject case. He, therefore, prayed for dismissal of instant criminal revision application.

5. Heard the arguments and perused the record.

6. From perusal of record it reflects that title of subject vehicle is not disputed. Contention raised by the learned counsel for respondent that subject Car was plied on rent requires consideration and it is yet to be determined whether said vehicle is liable for confiscation or otherwise subject to proof of absence of knowledge about commission of offence. In this respect, we have fortified with the case of Muhammad Waseem vs the State reported in 2011 MLD [Peshawar] 679, which for the sake of convenience is reproduced hereunder:-

“Judicial discretion can also be exercised for release of vehicle on “superdari” in view of well settled principle that if a court can grant final relief, it also possesses inherent jurisdiction to grant temporary relief, pending proceedings before it subject to prima facie fulfilling the conditions by the petitioner under the law for getting relief finally from the court. A tentative assessment of record would show that petitioner is prima facie a genuine owner of vehicle and if it is handed over to him on superdari, than keeping it in seizure condition for indefinite period waiting conclusion of trial, against furnishing of heavy surety bonds but subject to production of original documents of ownership, the same would be in the interest of justice.”

7. It has also not been alleged by the learned counsel for the A.N.F that applicant/respondent No.1 has violated any terms and condition of impugned order or the said vehicle has been misused. In absence of such proof, we do not find out any reason for interference in the impugned order, therefore, this Criminal Revision Application having no virtues is dismissed

JUDGE

JUDGE

Ahmed/Pa