

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Crl. Misc. Application No. 14 of 2020

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Date order with signature of Judge

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For hearing of main case.

**Ist. January, 2021**

Mr. Raj Ali Wahid Kunwar, Advocate for applicant.  
M/s. Muhammad Iqrar and Jamshed Ahmed Abbasi, Advocate for  
respondent No.2.  
Mr. Siraj Ahmed Khan Chandio, Addl.P.G.

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Omar Sial, J: Ali Raza Kazmi on 6-1-2019 sold a Toyota Alion (Registration No: AYN-943 Engine No: INZC24023 Chassis No: NZT 603012823 Model 2007) to Hikmatullah. Hikmatullah took delivery of the vehicle but the pay order he had given to Kazmi as sale consideration turned out to be a forged one. Kazmi registered F.I.R. No. 33 of 2019 under sections 420, 468, 471 P.P.C at the Shahr-e-Faisal police station against Hikmatullah.

2. On 16-1-2019 the vehicle was recovered from the possession of Farooq Bodla who claimed that Hikmatullah had sold him the vehicle. Both Kazmi and Bodla sought possession of the vehicle on Superdari basis by filing a section 516-A Cr.P.C. application before the concerned learned magistrate. The learned magistrate decided in favour of Bodla. Kazmi appealed the learned magistrate's decision before the learned 5<sup>th</sup> Additional District & Sessions Judge, Karachi East who on 20-2-2019 upheld the decision of the learned magistrate in favour of Bodla. It is this order that has been called into question in these proceedings.

3. I have heard the learned counsel for Kazmi as well Bodla. I have also heard the learned Addl.P.G. My observations are as follows.

4. Three grounds have been raised by the learned counsel for Bodla. One, that Bodla was in possession when the vehicle was recovered. Two, Bodla carried out all due diligence before buying the vehicle and is thus a bonafide purchaser without notice. Three, that the dispute regarding the title of the car will have to be decided by a civil court.

5. The title of the vehicle is admittedly still in the name of Kazmi. In a case titled **Inayatullah vs Muhammad Tufail and 2 others (PLD 1976 Lahore 641)**, the

Lahore High Court held that *“A stolen property cannot be given on superdari pending decision of the case to a purchaser from a thief. In the case of A.K.A.R.A. Chettyar vs Ma Saw Hla (AIR 1937 Rang. 450) it was held that where known facts plainly show that the property has been stolen it would be intolerable to allow the person to retain it as against the rightful owner and force the latter to civil suit.”* In another case reported as **Zulfikar Ali vs The State (2011 P.Cr.L.J. 1729)** it was observed that *“if the ground of last possession, as taken by the petitioner, was considered to be the sole basis for granting interim custody of the vehicle, then all accused involved in theft, robbery and dacoity cases, would claim “superadri” of the recovered vehicles as a matter of right and would amount to vitiating criminal proceedings.”* The same sentiment has been echoed in **Biradar Khan vs The State (2018 P.Cr.L.J. 1310)** and **Jamaluddin Ahmed vs Muhammad Maqbool and 2 others (2011 P.Cr.L.J. 1513)**.

6. Bodla’s bonafide in the purchase of the vehicle from Hikmatullah are upon a tentative assessment debatable. The car was registered in Karachi but Bodla carried out his due diligence in Bhawalpur. A prudent man would certainly not have done this. Obviously the Bhawalpur police would return a no case found report viz a viz the car. Bodla’s counsel was asked whether he has any evidence to prima facie show that the vehicle was purchased after due diligence. The learned counsel however apart from showing Bahawalpur documents could not refer to anything else.

7. In view of the above, while the title of the property will have to be decided in a civil suit, at the moment superdari of the vehicle, an ostensibly stolen one, cannot be given to Bodla. The impugned order is therefore set aside. Possession of the vehicle may be given on superdari to Kazmi upon Kazmi executing an affidavit that he will not alienate or encumber the vehicle or change its description in any manner till the legal proceedings in connection with the ownership of the vehicle are complete. Kazmi will also execute a P.R. Bond of Rs. 1.8 million. The original documents of the vehicle in question will be deposited with the Nazir of this Court, which documents then, upon an application from either party may be transferred to the learned court seized of deciding the ownership issue.

JUDGE