

THE HIGH COURT OF SINDH, KARACHI

Criminal Misc. Application No. 770 of 2022

Present: Mrs. Justice Kausar Sultana Hussain

Date of Hearing: 06.12.2023
Date of order: 28th February, 2024.
Applicant: Ghulam Shabbir through Mr. Z.U. Mujahid Advocate
Respondent No.1: Muhammad Abdullah through Mr. Ahmed Ali Hussain.
Respondent Nos.2-4 The State through M/s. Muhammad Kamran Khan & Talib Ali Memon, Asstt. Advocate General Sindh & Mr. Muhammad Noonari, DPG, Sindh.

O R D E R

Mrs. Kausar Sultana Hussain J.-Through this Criminal Miscellaneous Application, the applicant, Ghulam Shabbir, has challenged the impugned order dated 05.12.2022, passed by learned VI-Additional Sessions Judge, Karachi South in Criminal Revision Application No. 119 of 2022, whereby the order passed by learned V-Judicial Magistrate, Karachi South dated 08.11.2022 was maintained while dismissing the Revision Application of the applicant.

2. The relevant facts of the case are that on 09.11.2022 at about 1645 hours, respondent No. 4, SHO of PS Sahil, Karachi seized the vehicle No. BJK-710, Engine No. L13Z17459744, Chassis No. NFGM1644HR202361, Model, 2017 from the house No. 11, of applicant, Ghulam Shabbir, situated at main Khayaban-e-Tariq, DHA-VIII, Karachi under Section 550 Cr.P.C, as the applicant has failed to produce any ownership / title documents of the vehicle in question.

3. Learned counsel for the applicant argued that applicant is last possessor of the car in question as the said car was recovered from his possession; that the said car was neither stolen nor involved in any

offence, hence the same could not be seized under section 550 Cr.P.C; that both the Courts below have not considered the submissions made on behalf of the applicant and in a slipshod manner have declined to restore the possession of car in favour of the applicant.

4. Conversely, learned counsel for respondent No.1 has submitted that the respondent No.1, is a lawful owner of car in question as per report of Excise and Taxation Officer; that the learned Judicial Magistrate has dismissed the application filed under Section 523 Cr.P.C. by the applicant as well as respondent No.1, vide order dated 18.11.2022 without assigning any reasons while it is clearly mentioned in the report of Excise and Taxation Officer that the vehicle in question is registered in the name of the respondent No.1; that all the original title documents of the vehicle in question are in his possession, therefore, he prayed that the instant Cr. Misc. Application of the applicant may be dismissed and vehicle in question may be ordered to be handed over to the respondent No. 1.

5. Learned Assistants Advocate General, Sindh as well as learned Deputy Prosecutor General Sindh while opposing the instant Criminal Misc. Application submitted that applicant Ghulam Shabbir has no title documents of the car in question, hence the custody of the car was rightly declined to be restored in favour of the applicant as well as respondent No.1, who got registration of the car on 26.09.2022 after delay of five years.

6. I have heard the learned counsel for the applicant, respondent No.1 and the learned Assistants Advocate General and Deputy Prosecutor General Sindh and have perused the record as well as the impugned orders of the learned Courts below.

7. Record reflects that respondent No.1 Muhammad Abdullah claims that he is the owner of subject car and used to run business of rent a car, hence on 10.09.2017 he rented out subject car to one Hamid Nawaz son of Muhammad Nawaz Khan, who paid rent of that car till 2018,

thereafter, not only he stopped payment of rent a car to him but also became absconder alongwith subject car, hence he lodged an FIR No. 67 of 2018 against said Hamid Nawaz for cheating and taking away his car. Record further reveals that on 09.11.2022 the respondent No.1 found the said car parked at the house of the applicant Ghulam Shabbir, hence he immediately called police on 15, who reached there and recovered and seized the subject car of FIR No. 67 of 2018 under Section 550 Cr.P.C. The Section 550 Cr.P.C. deals as under:-

Power to police to seize properly suspected to be stolen.

Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the office incharge of a police station shall forthwith report the seizure to that officer.

8. The circumstances, as alleged by the respondent No.1 do show that Hamid Nawaz fraudulently taken away his car for which FIR No. 67 of 2018 was registered, therefore, under Section 550 Cr.P.C. it was stolen properly as per contents of FIR and police officer was empowered under Section 550 Cr.P.C to seize it on receiving information through the complainant (respondent No.1) in respect of its availability at the house of the applicant Ghulam Shabbir and according to the said provision he was also duty bound to report the matter to his superior police officer. To that extent I found no illegality in seizing subject car as it is a case property of FIR No. 67 of 2018, hence it should have been seized on its recovery. Now the question arises that whether the respondent No.1 is the registered owner of the subject car as he claimed. Record reflects that in order to ascertain ownership of the car report from Excise and Taxation Department was called, which is available on record and shows that the

respondent No.1 is the registered owner of car, who got its registration on 16.05.2017, and possessed its title documents, while Hamid Nawaz, who taken away the car do not have any title documents of the car, inspite of that he sold out the car to the applicant Ghulam Shabbir and surprisely the applicant did not make any enquiry before purchasing such car with regard to its ownership and its documents. In my view the Courts below have wrongly observed that there is dispute between the parties with regard to ownership of the car. From perusal of the report of Excise and Taxation Department it is clear that the respondent No.1 is a registered owner, who under the circumstances of this case is entitled for taking possession of subject car on superdari by the learned trial Court subject to furnishing surety bond with direction not to change the present condition of the car till final disposal of the case of crime No. 67 of 2018. The impugned orders of the Court below are hereby set aside in the light of the observation of this Court discussed above. Petition is hereby allowed with no order as to cost.

J U D G E

Faheem/PA

