

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Cr. Revision Application No. 08 of 2025

Applicant : Shams ur Rehman son of Ameer,
through Mr. Ibrahim Abro, Advocate

Respondent : The State
through Ms.Seema Zaidi, Addl.P.G.

Date of hearing : 18.09.2025

Date of order : 23.09.2025

ORDER

Dr. Syed Fiaz Ul Hassan Shah, J. - – The Applicant Shams-ur-Rehman son of Ameer invokes the Revisional Jurisdiction of this Court under section 439 Criminal Procedure Code, 1898 (**Cr.P.C.**) against an Order dated 28.10.2024, passed in Cr. Misc. Appln No.401/2024 (Re. Shams ur Rehman v. The State), by the Court of learned Additional Sessions Judge-VI, Malir, Karachi, (**Trial Court**) whereby the Misc. Application under Section 516-A Cr.P.C. was dismissed.

2. According to the prosecution, as narrated in the FIR, the complainant Muhammad Haroon is employed as an Assistant Security Officer with PARCO. On 24.08.2024, while on routine patrol duty in vehicle No.GY-7404, accompanied by Supervisor Majid Khan, Guard Yasir Ali, and Driver Asghar Khan, the team received information from line walker Muhammad Nawaz. He informed Supervisor Majid Khan that some suspicious individuals were seen near KPLP-19, where a Mazda vehicle bearing registration No. JZ-3603 was also parked.
3. Acting promptly, Majid Khan reached the location at around 11:00 a.m. and observed three suspicious persons. He informed the complainant, following which Security Officer Major (Rtd.) Iftikhar Hussain also arrived at the scene. The three suspects were apprehended by Majid Khan and, upon inquiry, disclosed their identities as Zawar Hussain S/o Mehram Ali,

Pervaiz S/o Ijaz, and Mustafa S/o Nawaz. The local police were then called to the spot.

4. Upon inspection of the pipeline in the vicinity, a secret tunnel was discovered. Further examination revealed the presence of an unauthorized iron clip and a pressure pump affixed to the pipeline. The maintenance team, including Shafiuddin, was called to the site. He removed the illegal clip and installed a safety clip in its place. During the initial investigation, it was found that the accused, with the alleged assistance of one Shoaib Memon, had tampered with the oil pipeline with the intent to steal oil. The accused persons, along with the seized iron clip and the vehicle, were handed over to the police for further legal action. Accordingly, the present FIR was registered.
5. I have heard the learned counsel for the applicant as well as the learned Additional Prosecutor General, Sindh, and have also carefully perused the available record.
6. Upon consideration of the record submitted by the learned counsel for the Applicant, I have considered that the Applicant has paid the sale consideration along with the relevant installments and liabilities to M/s OLP Leasing Pakistan Limited and the said financial institution has accordingly delivered the original documents pertaining to the vehicle in question to the Applicant, who also claims to have entered into an agreement with the previous owner of the vehicle. However, the Applicant has candidly admitted that his name does not appear in the official records maintained by the Motor Vehicle Registration Authority. Moreover, the Applicant has failed to demonstrate the intended use of the vehicle or to establish the necessity of a Route Permit, as required for public carriage under the relevant provisions of law. No certificate issued by the Provincial Transport Authority has been placed on record. Additionally, the learned counsel has not produced the mandatory driving license of the individual designated to operate the vehicle.
7. The provision of Section 516-A of the Code of Criminal Procedure enables the Court to make an appropriate order for proper custody only when the property regarding which any offence appears to have been committed or which appears to have been used for the commission of any offence is produced before the Court during any inquiry or trial. Section 516-A Cr.

P.C. would, therefore, have no application unless the property is produced before the Court during an inquiry or trial. There is nothing in the present case to show that the vehicle seized which formed the subject matter of the offence charged against the Applicant was produced before the trial Court. As a matter of fact, the facts on record clearly indicate that such vehicle was not at any time produced before the learned Trial Court.

8. In order to determine whether jurisdiction was rightly conferred upon the learned Magistrate under Sections 516-A and 523 of the Criminal Procedure Code to entertain the request for release of the truck in question, a careful examination of the record reveals that the impugned order was passed on applications styled as bail petitions. Such applications are procedurally misconceived for seeking release of property, as bail proceedings are distinct in nature and scope. Section 516-A, Cr.P.C., pertains to the interim custody of property during the pendency of an inquiry or trial, and its invocation is contingent upon the matter being sub judice before a competent Court. In the present case, no inquiry or trial was pending at the time of the application, thereby rendering Section 516-A inapplicable.
9. As regards Section 523(1), Cr. P.C., it empowers a Magistrate to pass orders concerning property seized by the police under Section 51, or property suspected to be stolen or found under suspicious circumstances. Although the provisions of the special law, namely the West Pakistan Motor Vehicles Ordinance, 1965, were not invoked during the course of investigation, the applicability of Sections 3, 112-A, 114, and 115 of the said Ordinance remains materially relevant to the offences alleged in the instant case. The Section 115 of said Order speaks:

115. Power to detain vehicle used without certificate of registration or permit.— Any police officer authorized in this behalf or other person authorized in this behalf by Government may if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of sub-section (1) of section 23 or without the permit required by sub-section (1) of section 44 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle.

10. The seizure in the instant case deems to be under said Ordinance, 1965 rather under the general provisions of the Code. Section 5(2), P.P.C., clarifies that offences under special laws are to be dealt with according to

the Cr. P.C. only to the extent that such laws do not prescribe a distinct procedure.

11. The phrase “*otherwise dealt with*” as employed in Section 5(2) of the Criminal Procedure Code pertains specifically to the procedural handling of offences, and does not extend to ancillary matters such as the disposal of property. Consequently, the order passed under Section 523, Cr.P.C., in a case arising under the West Pakistan Motor Vehicles Ordinance, 1965, read with the provisions of the Code, is ultra vires and without lawful authority and therefore a Magistrate lacks jurisdiction to invoke Section 523, Cr.P.C., in the absence of a seizure effected under the Code or a pending criminal inquiry.
12. Nonetheless, an alternative legal construction may be considered in support of the applicability of Section 523(1), Cr.P.C. The language of the provision expressly contemplates orders concerning property taken under Section 51, Cr.P.C., and further echoes the terminology found in Section 550, Cr.P.C., which governs seizure of property by a police officer. This textual symmetry suggests that the scope of Section 523(1) encompasses property seized under both Sections 51 and 550, Cr.P.C. Accordingly, where property is taken into custody by the police either during the arrest of a person (under Section 51) or under circumstances giving rise to suspicion of the commission of an offence (under Section 550), a Magistrate is empowered to pass appropriate orders regarding its disposal, delivery, or custody. Such an interpretation promotes procedural coherence within the Code and ensures that property seized under lawful authority remains subject to judicial oversight, thereby safeguarding the rights of interested parties and preserving evidentiary integrity.
13. In view of the foregoing discussion, no illegality or procedural impropriety is found in the impugned order. Accordingly, the instant application stands dismissed. However, the Applicant shall remain at liberty to move a fresh application under Section 516-A, Cr.P.C., before the trial Court, upon rectification of the noted defects and infirmities. The trial Court shall consider such application and pass an appropriate order in light of the observations recorded hereinabove.

JUDGE