

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No.60 of 2012

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ORDER WITH SIGNATURE OF JUDGE

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For Katcha Peshi

Date of hearing 08.08.2012

Mr. Ali Akber Poonawala Advocate for the applicant.

Mr. Mohammad Tariq Advocate for respondent No.2.

Ms. Seema Jabeen Assistant Prosecutor General Sindh.

Abdul Rasool Memon J .- This Application under section 561-A Cr.P.C. has been filed by Muhammad Suhail Memon challenging the order dated 30<sup>th</sup> of January, 2012 passed by the learned VIth Additional District and Sessions Judge, Karachi East whereby the learned District Judge allowed the Criminal Revision Application No.77 of 2011 of respondent No.2 namely Shoukat Alam and consequently allowed custody of the disputed vehicle to respondent No.2 and set aside the order of XVIth Civil Judge & Judicial Magistrate, Karachi East dated 08<sup>th</sup> of October, 2011, who while deciding the two applications through single order, filed by the applicant and respondent No.2 respectively under sections 516-A and 523 Cr.P.C. had given to

present applicant on Superdari the disputed vehicle i.e. Honda City Vogue Silver colored Car bearing temporary registration No.ALL-844 Chasis No.NFVGE 16486R136410 Engine No.L12A2.1036409.

2. The case of the applicant is that the Car in dispute was owned by M/s. Atlas Honda Ltd. and he purchased the said car from one Abbas S/o. Muhammad Bashir on 12.8.2011 through sale agreement dated 13.8.2011 on transfer letter and same was handed over to him by the said vendor with original documents. The respondent No.2 Shoukat Alam approached the concerned police and as such applicant's Car was seized under section 550 Cr.P.C. on 22.8.2011 by police without adopting legal recourse and therefore on 10.9.2011 applicant has moved an application in terms of section 523 Cr.P.C. before the Court of learned XVIth Civil Judge & Judicial Magistrate, Karachi East and upon that report was called from the concerned police. In the meanwhile, on 21.9.2011, the respondent No.2 Shoukat Alam had lodged F.I.R. No.349/2011 at P.S. Mubina Town against the said Abbas son of Muhammad Bashir under section 420, 468/471 P.P.C., inter alia, on the ground that he is serving as Manager in Honda Car Company and he owned the disputed Car which was purchased from him by said Abbas on 12.8.2011 against valuable sale consideration of Rs.7,90,000/- for which said Abbas had issued in his favour a pay-order which was subsequently found to be fake by the Bank Al-Habib Ltd. Gulshan-e-Iqbal Branch Karachi on presentation. It is mentioned in the application that subsequently respondent No.2 Shoukat Alam had filed objections on application of the applicant filed by him under section 523 Cr.P.C. and in addition, respondent had also filed an application under section 516-A Cr.P.C. for the delivery of disputed Car to him on Superdari before the Ilaiqa Magistrate, who after hearing both the parties accepted the application of the applicant and rejected the

application of respondent No.2 vide order dated 08.10.2011. Later on, respondent No.2 being aggrieved filed Revision Application before the learned District and Sessions, Judge Karachi East and as such same was made over to the Court of learned VIth Additional District and Sessions Judge, Karachi East for disposal according to law, who allowed the same and set aside the order of the Magistrate vide order dated 30.01.2012 with observations that vendor of the Car namely Abbas has played a fraud with the applicant (respondent No.2 herein) by issuing him a fake pay-order (price of car), from whom the Vendee (applicant herein) has purchased the disputed Car and further Atlas Honda Company had also cancelled N.O.C. issued in favour of the said Abbas and therefore, learned Judge proceeded to set aside the order of the Magistrate and handed over the disputed Car to the respondent No.2 on Superdari subject to furnishing personal bond of Rs.800,000/-, hence the present application.

3. The learned counsel for the applicant argued that the order of the learned VIth Additional District and Sessions Judge, Karachi East is harsh and against the law and facts of the case. He argued that respondent No.2 has sold out the disputed car to said Abbas from whom the applicant has purchased the car in good faith after completing the codal formalities and that the applicant has no concern with the alleged fraud committed by said Abbas. He further argued that if the said vendor committed any forgery or played fraud with respondent No.2 while issuing him a fake pay-order of Rs.7,90,000/- for consideration of the disputed car the respondent No.2 ought to have filed a civil suit against the same vender for recovery of the said amount. However, he argued, in collusion with police the respondent No.2 had initially initiated proceedings under Section 550 Cr.P.C. and then he lodged an FIR against the vendor of the disputed car on which said car was seized by the police from the possession of the applicant. He lastly argued that the

applicant being bona fide purchaser of the disputed car had rightly been allowed by the concerned Magistrate while deciding his application in terms of Section 523 Cr.P.C. to retain the car, however, without applying judicial mind the learned Additional District and Sessions Judge has set-aside the order of the Magistrate on wrong interpretation of case law and without appreciating factual controversy. He therefore argued that the said order may be set-aside. In support of his contentions the learned counsel relied on the following case laws:

1. HASSAN MOHAMMAD Vs. NAZAR HUSSAIN and others (2005 SCMR 1063)
  2. ALI MOHAMMAD VS. ADDITIONAL SESSIONS JUDGE and others (2007 MLD 1096)
  3. Mst. SHAHEEN BEGUM VS. SHO (ACLC) and others (2005 MLD 176)
4. On the other hand learned counsel for the complainant of FIR No.349 of 2011 of P.S. Mobeena Town respondent No.2 namely Shaukat Aalam argued that his client is serving as Manager in Honda Atlas Car and owned the disputed car. According to him he sold the said car to one Abbas son of Mohammad Bashir against consideration of Rs.7,90,000/- for which amount said Abbas had given him a pay-order which was subsequently found fake by the concerned bank on the presentation and therefore initially a report under Section 550 Cr.P.C. was made at P.S. and when the respondent came to know that fraud has been played with him he lodged the FIR with the concerned police station against said Abbas and further NOC earlier issued in the name of said Abbas for registration of the vehicle car had been cancelled by Honda Atlas Ltd. According to him on the basis of forgery and fraud said Abbas had sold the disputed car to the applicant within few days. He argued that disputed car was sold by the accused of criminal case to the applicant, therefore, the said transaction cannot be said to be legal and therefore learned Additional District and Sessions Judge Karachi East has rightly set aside the order of the

Magistrate and passed an order for delivery of disputed car to the respondent No.2. To substantiate his arguments he relied on the following judgments.

1. QAISER SHAFEEQ VOHRA VS. THE STATE AND MOHAMMAD SALEEM (NLR 1993 Cr.L.J. 194)
2. Khawaja FASAL KARIM VS. THE STATE and others (1986 SCMR 483)
3. THE STATE through ANF Gilgit Vs. CHIDI and 7 others (2007 P.Cr.L.J. 1306)

5. I have heard the learned counsel for the parties and gone through the records of the case and the judgments relied on by them.

6. From the record it is clear that the respondent No.2, who was initially in possession of the disputed car as the same was made over to him by Honda Atlas Ltd. as he was serving there, sold the said vehicle to said Abbas on 12.08.2011 against the sale consideration of Rs.7,90,000/- and for that amount said Abbas issued him a pay-order vide No.POH 1911137 of Bank Al-Falah Ltd. Gulshan-e-Iqbal Branch, Karachi. However, on presentation of said pay order it was found to be fake as Bank letter dated 16<sup>th</sup> of August, 2011. It appears that on the next day of the said bank report i.e. 17<sup>th</sup> August, 2011, the respondent No.2 has filed application with the SHO Mobeena Town with request to initiate action against vendee of disputed car namely Abbas and he further requested the police to stop Abbas from selling his car to any other person. Resultantly, the disputed car was seized on 22.08.2011 under section 550 Cr.P.C. At the same time Honda Atlas Ltd. vide its letter No.AHL-HR/1252/2011 dated 24<sup>th</sup> of August wrote letter to the Excise and Taxation Office, Motor Vehicle Registration, Karachi to the effect that the transfer letter for disputed car earlier issued in favour of Abbas may be treated as “cancelled”. It appears that

ultimately FIR No.349 of 2011 under Section 420/468/471, P.S. Mobeena Town was registered at the instance of respondent No.2 on 21.09.2011 against said Abbas who had earlier issued a fake pay-order in favour of the respondent No.2 in respect of purchase of the car. Thus, it can easily be said that as soon as respondent No.2 came to know about the forgery and fraud said to have been played on him by the vendee Abbas he made hectic efforts to either get the car back or to recover the sale consideration amount. However, he could not be able to do so in view of the conduct of the said Abbas. In this context record shows that disputed car though purchased by the vendee Abbas from respondent No.2 on 12.08.2011 against sale consideration of Rs.7,90,000/-, but he sold the vehicle to the applicant on the very next day i.e. 13.08.2011 for a sale consideration of Rs.6,40,000/- by sustaining so called monetary loss of Rs.1,50,000/- in one day. This act on the part of said Abbas itself speaks some foul play and indicates that transaction so far made in haste manner in respect of the disputed car was only to create obstacle for the respondent No.2. Be that as it may, now it is to be seen as to whether the previous vendee Abbas in the circumstances when the disputed car had been purchased by him from the respondent No.2 on the basis of forgery and fraud could be allowed to sell the said car? Not at all. Though applicant claims to be bona fide purchaser of the disputed car but he cannot be treated as lawful owner. At the most he can avail legal remedy to recover his loss if any from the said Abbas who is an accused in FIR registered by the respondent No.2 against him.

7. The case law referred by the learned counsel for the applicant has no relevancy with the facts and circumstances of this case. It is worthwhile to mention that almost similar controversy was decided by this Court in the case of QAISER SHAFEEQ VOHRA quoted supra wherein (at

page 200) after considering the case law on the subject this Court laid down the following principles:-

“15. Admittedly the car belonged to applicant. There is also no dispute that it was stolen on 30.05.1989 and such FIR being Crime No.339 of 1989, was registered at Ferozeabad P.S. The applicant took all possible precautions so that this car may not be re-registered, but all in vain. This car was re-registered and purchased by respondent No.2 from Lahore. On seizure the Chassis No. and Engine No. were found the same but still the real owner was deprived of its custody as against the respondent No.2 who is a purchaser from a thief. It may be added that the registration certificate is not in the name of respondent No.2 who is retaining the car on the strength of open transfer letter, which in my view is not a valid document of title. I am supported in this behalf by the case of Ghulam Shabbir Lashari Vs. The state reported in PLJ 1990 Cr.C. 489, wherein it was observed that T.O. for is not by itself a document of title.

16. The case of AKARA Chettyar Vs. Ma Saw Hla reported in AIR 1937 Rangoon 450, is the nearest parallel to the present case, wherein it was remarked:-

“Where the known facts plainly show that the property has been stolen, it would be intolerable to allow the person in whose possession the property is found to retain it as against the rightful owner and force the latter to a civil suit for its recovery if the accused absconds.”

17. In the case of Inayatullah Vs. Mohammad Tufail and 2 others reported in PLD 1976 Lahore 641, it was held in clear terms that stolen property cannot be given on SUPERDARI to a purchaser from thief pending decision of the case”

8. For the reasons enumerated above and the case law cited above on the point in hand, the impugned order of the learned VIth Additional Sessions Judge, Karachi East cannot be interfered with therefore this application being meritless is dismissed with directions to the trial Court to

expeditiously decide the case arising out of FIR No.349 of 2011, P.S. Mobeena Town purely on merits without being influenced by the observations contained in this judgment.

Karachi

J U D G E

Dated            August, 2012

*Farooq PS/\**