

## Judgment Sheet

**IN THE PESHAWAR HIGH COURT,  
PESHAWAR.**

Judicial department

**Cr.M/QP No.74-P/2019****“Secretary to Govt. of KPK,****Peshawar etc****Vs****Tajdar Khan etc”****JUDGMENT**Date of hearing **20.08.2020**

Petitioner (s) by: Syed Hamad Ali Shah, Advocate

Respondent (s) by: Mr. Ijaz Muhammad, Advocate

State (s) by: Mr. Rab Nawaz Khan, Addl: AG

**IKRAMULLAH KHAN, J.-** Through the instant quashment petition, filed under section 561-A Cr.PC petitioners have challenged the impugned judgment dated 18.09.2019, rendered by learned Sessions Judge, Nowshera, whereby the learned Judge has handed over the vehicle bearing registration No.LEC-102 on interim custody to the respondent/claimant owner.

**2.** In essence, a motor vehicle bearing Registration No.LEC-102, had seized by

squad of Intelligence Bureau of Excise Taxation & Narcotics Control Department, KP, Peshawar (Petitioners) on the basis of suspicion, of having bogus Registration documents and tamper chassis. The motor vehicle concerned was inspected and examined through Forensic Science Laboratory for the purpose to determine any tampering within the chassis of the vehicle, which was found to be tampered. The Registration documents after verification from the concerned Registration Authority, Lahore, were also declared to be bogus. That the respondent namely Tajdar Khan, claiming to be owner and lost possessor, applied thereto the learned Court of Sessions, for interim custody of the motor vehicle concerned, by filing an application under section 516-A Cr.PC, which was allowed through the impugned judgment, hence the instant petition, filed by the petitioners with the following relief:

"It is, therefore, most humbly prayed that in view of aforesaid facts the impugned order may

kindly be quashed/set aside and the vehicle in question may be left in the custody of Provincial Ware House, for the further process of confiscation in favour of State under the relevant law."

**3.** Learned counsel for petitioners contended that the impugned judgment is against law; that the learned Court has no jurisdiction to exercise any power to make direction, in view of Section 516-A Cr.PC for giving interim custody of the motor vehicle concerned, as the same was not case property described thereunder Section 516-A Cr.PC; that under the Khyber Pakhtunkhwa (Road Checking, Seizure and Disposal of Motor Vehicles), Rules, 2015, a definite hierarchy is provided, for disposal of vehicles, seized under the Rules, 2015 and no criminal case has been registered by the petitioners against the respondent, therefore, the learned Court of Sessions has got no jurisdiction to release the vehicle under consideration on bail/interim custody.

**4.** On the other hand, learned counsel for respondent argued that the vehicle under

consideration is case property of case FIR No.44, which had released by competent Court of law on bail/interim custody; that on one hand, the petitioners could not seize the vehicle under consideration under the Motor Vehicle Rules, 2015, while on other hand, no criminal proceedings under different head of law, could be initiated against the motor vehicle under consideration, therefore, the impugned judgment is based on proper appreciation of law on the subject, and is just and fair, could not be set aside by this Court, in exercise of its inherent jurisdiction saved thereunder Section 561-A Cr.PC.

**5.** I have heard learned counsel for the parties, and also learned Additional Advocate General on behalf of the State in light of facts on record and law on the subject.

**6.** In order to resolve the legal proposition, agitated during course of argument by learned counsel for the parties, it would be expedient to give reference to

relevant provisions of law, under which petitioners could seize and confiscate motor vehicles and power/jurisdiction of Courts, in matter of releasing/handing over of motor vehicles, involved in any criminal case, seized by law enforcing agencies under provisions of respective law on the subject.

**7.** The Government of Khyber Pakhtunkhwa, in exercise of its legal rights, conferred upon her, under section 43, 23 and 25(4) of the Provincial Motor Vehicles Ordinance, 1965, has made the Khyber Pakhtunkhwa (Road Checking, Seizure and Disposal of Motor Vehicles) Rules, 2015 where under Rules 3, Seizing Officer may seize the following vehicles:

**"3. Seizure of illegal vehicles.**---The seizing officer may seize the following vehicles:

- (a) having suspicious registration certificate, or the registration certificate of which has been suspended or cancelled under the first proviso to sub-section (4) of section 25 of the Ordinance; or
- (b) suspicious chassis number; or
- (c) tax defaulted vehicle; or

(d) snatched or lifted vehicle as per police record; or

(e) non-production of valid registration documents or registration mark; or

(f) vehicles used in suspicious subversive activities; or

(g) vehicles with suspicious superdari documents; or

(h) any suspicious vehicle found parked in the private premises including bargain centers and general bus stands etc.; or

(i) vehicle wherein secret cavities are designed in such a way to facilitate the transportation of narcotic substances and other contraband items."

**8.** The provisions contained in Rule 3 *ibid*, prescribed the procedure, in matter of seizure etc, and Sub-Rule (2) of the Rule 4 of Rules, 2015, make it mandatory that the officer incharge of the Ware House shall enter **Form "A"** and other particulars of the vehicle in a separate register to be maintained by him in **Form "B"**. While in term of sub-Rule (4) of Rule 4 *ibid*, the seizing officer shall record full detail of the person from whom the vehicle is taken into possession and to investigate such person if requires, in the manner as may be specified in **Form "C"** thereof. Rules 6 and 7 of Rules,

2015 provide the mechanism for chemical examination of the motor vehicle and verification of documents/registration respectively. The provisions contained in Rule 8 of the Rules, 2015 prescribe the procedure, either to confiscate the motor vehicle so seized or to release the same, which reads as:

**"8. Notice to the owner or last possessor.**---(1) The confiscating authority shall issue notice to the owner or last possessor, as the case may be, of the seized vehicle through registered post with acknowledgement due, asking to appear before him, within fourteen (14) days, after the issue of such notice and to establish that he is bonafide owner or possessor, as the case may be, of the seized vehicle.

(2) In case the owner or last possessor appears and establishes his claim of ownership over the seized vehicle, the District Officer shall decide such claim within fourteen (14) days after hearing the owner or last possessor or any other claimant, as the case may be, if there is rival claimant. But if for some unavoidable reason the proceedings cannot be finalized within the stipulated period of time, the case shall be referred to the Director General, for extension of period, who may extend the period, not exceeding thirty (30) days.

(3) If the owner or possessor establishes his rightful ownership, the confiscating authority shall, under his seal issue release order, and direct the officer incharge of the warehouse to deliver the vehicle

to him, alongwith accessories mentioned in Form "A" under intimation to the seizing officer."

In term of Sub-section 3 of Rule 9 *ibid* while in case of chassis frame, sheet, plate etc is tampered, it may be confiscated which reads as:

**"9 (3)** If the chassis frame, sheet, plate or number, as the case may be, of the seized vehicle is tampered or cut and welded or its original chassis number is found completely removed as per Forensic and Science Laboratory report, or if the registration book or other documents, as the case may be, is found fake and forged, the confiscating authority shall record its order for confiscation of the seized vehicle in favour of Government, subject to the provisions of rule 10."

**9.** Any person aggrieved from the order passed by Confiscating Authority under the provisions of Sub-Section 3 of Rule 9 of Rules, 2015 may prefer an appeal to the concerned Deputy Director (Regional) within 15 days after passing of such order under Rule 10 (1) *ibid*. While, under Sub-Rule (2) of Rule 10 *ibid* another appeal is allowed, against the order of Deputy Director, before the Deputy Director General within 30 days. In view of Sub-Rule (5) of



Rule 10 ibid the Secretary to Government may, on its own accord or on an appeal filed by any aggrieved person within 60 days, against the order of the Director General may pass such orders as it deem fit in accordance with law.

**10.** The above mentioned Rules provide a concise and complete procedure, thereafter seizure of a vehicle under these rules, and before confiscation of the same, which are still holding the field and, is prevailing law on the subject, while on other hand, the provisions contained in Section 516-A Cr.PC, empower a criminal Court to make order for disposal of property pending trial in certain cases which reads as:

**“Sec. 516-A. Order for Custody and disposal of Property Pending trial in certain cases.-** When any 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 any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary,

order it to be sold or otherwise disposed of.

Provided that, if the property consists of explosive substances, the Court shall not order it to be sold or handed over to any person other than a Government Department or office dealing with, or to an authorized dealer in, such substances.

Provided further that if the property is a dangerous drug, intoxicant, intoxicating liquor or any other narcotic substance seized or taken into custody under the Dangerous Drugs Act, 1930 (II of 1930), the Customs Act, 1969 (IV of 1969), the Prohibition (Enforcement of Hadd) Order, 1979 (P.O. 4 of 1979), or any other law for the time being in force, the Court may, either on an application or of its own motion and under its supervision and control obtain and prepare such number of samples of the property as it may deem fit for safe custody and production before it or any other Court and cause destruction of the remaining portion of the property under a certificate issued by it in that behalf:

Provided also that such samples shall be deemed to be whole of the property in an inquiry or proceeding in relation to such offence before any authority or Court."

**11.** As clear from the available record that the petitioners had taken into custody and had seized the motor vehicle under consideration, on the basis of having not only forged registration number, but also tampered chassis frame, under Motor Vehicles Rules, 2015, and no any criminal

case had registered by the petitioners against the respondents, and no any criminal inquiry is under process or any trial is pending before any criminal Court, while the vehicle in question is neither a case property nor used in commission of an offence, so in such circumstances, the provisions of Section 516-A Cr.PC is not at all attracted and applied thereto the seizure of the motor vehicle in question and, the learned Court of Sessions had got no jurisdiction in order to pass any judgment to hand over custody of the vehicle in question to the respondent.

**12.** In so far as, the contention of learned counsel for respondent is concerned, that the motor vehicle under consideration is case property of case FIR No. 44 registered against accused namely Tajdar Khan could be considered by the officers, designated under the Rules, 2015 for the purpose. However, the record reveals that the vehicle which had given on superdari/interim custody to respondent had bearing Chassis

No. Z RE.1414508599 and Registration No. LEC-12-102, but in case in hand, the vehicle so seized by petitioners although display registration No.LEC-12-102 but the document/registration was found and declared to be bogus , while the chassis number is wielded. It could not be presumed that the vehicle so seized under consideration is the one, which is also case property of case FIR No. 44.

**13.** All these disputed and factual controversy, be dealt with by the Competent Authority, designated as such under the Motor Vehicles Rules, 2015 and, the petitioners, if so advised may take recourse to the concerned Authorities.

**14.** For the reasons mentioned hereinabove, this petition is allowed and accepted, consequently the impugned judgment dated 18.09.2019 is set aside. The motor vehicle, if already handed over to respondent, shall be re-taken into custody by the petitioners, and shall initiate process

under the Rules, 2015, if not already commenced and, the petitioners or any other claimant/owner may be afforded opportunity to prove its legal ownership (if any) and the matter be decided in accordance with law.

**Announced**  
**20.08.2020**

**J U D G E**

(SB) Hon'ble Mr. Justice Ikramullah Khan

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