



The
PESHAWAR HIGH COURT
Peshawar

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No. 13477-S10 /ADMN:

Dated Pesh the 04/10 /2021

To:

All the District & Sessions Judges/
Zilla Qazis in the Khyber Pakhtunkhwa.

Subject: **WRIT PETITION NO.564-P/2021.**
Owais Shakoor...Vs...The State

Dear Sir,

I am directed to forward herewith copy of judgment dated 22.09.2021, passed by the Hon'ble Division Bench of this Court in the subject case, for circulation amongst all the concerned courts within your respective district, for information and compliance, please.

Sincerely yours,


ADDITIONAL REGISTRAR (ADMIN)
FOR REGISTRAR

Endst: No. & Date Even:

Copy forwarded to: -

1. The Additional Registrar (Judicial), Peshawar High Court, Peshawar alongwith original case file.
2. The Director (IT), Peshawar High Court, Peshawar for uploading on official website of this Court.


ADDITIONAL REGISTRAR (ADMIN)
FOR REGISTRAR
5/ 2.10.2021

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.564-P/2021

Owais Shakoor son of Muhammad Shakoor Khan,
r/o House No.21, Street No.6 Mohallah Purana
Tall Alipur District Islamabad.

Petitioner (s)

VERSUS

The State

Respondent (s)

For Petitioner (s) :-
For State :-
Date of hearing:

Mr. Raja Khuram Khushal, Advocate.
Mr. Waqas Khan Chamkani, Advocate.
22.09.2021.

JUDGMENT

ROOH-UL-AMIN KHAN, J:-By invoking the constitutional jurisdiction of this court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Owais Shakoor, the petitioner, seeks issuance of an appropriate writ to the effect that vehicle Toyota Corolla bearing Registration No.QC.383 ICT (*to be referred hereinafter as the vehicle in question*), may be handed over to him on superdari or the learned trial Court/Judge Special Court (CNS), Peshawar may be directed to decide the fate of the vehicle in question under section 32 of CNS Act, 1997 expeditiously.

for the State
2. The resume of facts forming the background of the instant petition are that vehicle in question has been taken into custody by Police Station ANF, Peshawar, in case FIR No.98 dated 10.12.2015, under sections 9 (c), 14 and 15 Control of

Narcotic Substances Act, 1997. Accused Tahir Abbas is booked in the said case on the allegation of trafficking narcotics in the vehicle in question. The petitioner claiming the vehicle to be his ownership, submitted an application for its superdari before the learned trial court, but the same was withdrawn. He then filed Cr.A. No.549-P/2016, before this Court and the same was dismissed vide order dated 20.01.2017. He once again approached the learned trial court for the same relief by filing application, however, his request was turned down vide order dated 28.03.2019. He once again filed Cr.A. No.456-P/2019, before this court which was disposed of in the terms that the learned trial court shall conclude the trial in the case expeditiously and decide the fate of the vehicle in question strictly in accordance with section 32 of the CNS Act, 1997, vide judgment dated 04.11.2019.

3. Grievance of the petitioner is that in pursuance of judgment dated 04.11.2019, he submitted application before the learned trial court for deciding the fate of the vehicle in question or its delivery on superdari till conclusion of the trial, but the same is still pending, hence, this writ petition.

4. Learned counsel for the parties heard and record perused.

5. It appears from record that successive attempts of the petitioner before the learned trial court as well as this court in respect of superdari of the vehicle in question have proved abortive. Trial in the case is in progress and this court has already directed the learned trial court for deciding the fate of the vehicle

Mohammed Sami

in question within the meaning of section 32 of the CNS Act, 1997 at the time of final decision in the case.

6. We have noticed that the vehicle in question has been taken into custody in case FIR No.98 on 10.12.2015 and by then it was registered in the name of one Abdul Bashit. After registration of the case, the petitioner has transferred the same in his own name on 04.01.2016 despite the fact that the vehicle in question is parked at Police Station ANF, Peshawar. The practice of transfer of the vehicle involved in criminal cases during trial has been deprecated by the Hon'ble Supreme Court in its judgment dated 13th March, 2020, rendered in *Criminal Petition No.74-L of 2018, titled, "Amjid Ali Khan vs the State etc"*. For the sake of convenience and ready reference relevant parts of the judgment are reproduced below:-

"14.The vehicle was registered in the name of the petitioner by the Motor Registration Authority under MVO when the vehicle had already been seized by the police and had become case property in a criminal case, hence becoming liable to confiscation under CNSA. As a result the disposal of the vehicle comes under the control of the court and the owner stands cautioned not to deal or transact with the title of the vehicle till the conclusion of the trial. Infact there is a freeze on the legal title of the owner of the vehicle till the conclusion of the trial. The rationale behind this being that any transfer or change in the title of the vehicle (case property) would undermine the safe administration of criminal justice system; as any such transfer (registration of the vehicle in the name of a third party) would amount to interfere in the powers of the criminal court and in eroding the sanctity and security of the evidence in an ongoing criminal trial. Therefore, transfer of ownership of the vehicle by the Motor

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Registration Authority was not permitted and is, therefore, without lawful authority.

"16. We deem it appropriate to direct the Provincial Governments and the Chief Commissioner, ICT to consider amendment(s) in MVO and the Rules thereunder to prevent registration of vehicle involved in the commission of crime as discussed above. In addition, the Provincial Governments and ICT may consider that the motor Registration Authority and the Police develop an online verification system to identify vehicles involved in the commission of crime. The transferor/transferee at the time of registration of vehicle may be required to obtain a No Objection Certificate from the Police or to submit an affidavit to the effect that the vehicle is not involved in any criminal case.

"17. The deputy Registrar of this court at the Lahore Branch Registry shall send copy of this order to the Secretaries, Excise & Taxation Department of all the Provincial Governments and Director Excise & Taxation Department, ICT, as well as, Inspectors General Police of the respective Governments, for information and appropriate action at their end."

7. This court too while dealing with identical situation in case titled, "Sakhawat Gul vs the State" in its judgment dated 07.02.2018, has passed the following observations/remarks:-

"During the course of arguments, learned counsel for the appellant produced original Registration Book of the vehicle in question wherein the vehicle in question has shown to have been transferred in the name of the appellant Sakawat Gul by the Motor Registering Authority Lahore, however, the relevant page of the registration book with regard to transfer in the name of the petitioner does not bear any date or seal/stamp of the motor Registering Authority Lahore. It seems very strange that in earlier round of litigation the vehicle in question was not registered in the name of the appellant, rather one Farzana Akram was recorded its owner. The documents relied upon by the appellant in support of his claim in the earlier round of his same plea,

Justice Sami

were held by this Court as sufficient to falsify the claim of the appellant. The said order had also been maintained by the apex Court. The present Registration Book reveals the name of the first owner as Farzana Akram. However, it was transferred in the name of the appellant despite the fact that the vehicle in question was and is in custody of the local police of Police Station Chamkani Peshawar. We have noted in so many cases that the tendency of transfer of ownership of vehicles in the name of strangers, involved in various offences is alarmingly increasing, particularly, in cases of vehicles registered in Lahore (Punjab). Since, the plea of the appellant with regard to superdari of the vehicle in question has already been dismissed by this Court on merits, therefore, without dilating upon the merits of the case, this appeal is dismissed with costs of Rupees fifty thousands to be paid by the appellant.

It is shocking and noted with great concern that this is not the first time; rather we, are facing with numerous cases wherein Motor Registering Authorities, Lahore, have transferred the non-existing vehicles from original owners to tout persons on fake documents. Before this case, similar transfers by the Motor Registering Authorities Lahore (Punjab), had already been brought into the notice of the Director General Excise, Lahore, but to no avail therefore, copy of this order be sent to the worthy Chief Secretary, Punjab, for looking into the matter and taking actions against the officials involved in transfer of registration of the vehicle in question in the name of the appellant and similar others, with intimation to this Court through the Office of the Additional Registrar (Judicial). It is expected that the worthy Chief Secretary, Government of Punjab shall seriously look into the matter and shall take the responsible to the logical end." (bold and underlines supplied emphasis).

8. For what has been discussed above, this petition stands dismissed. The worthy Additional Registrar (Judicial) of this court shall send copy of this judgment to the Director General

Looked into