

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Mohammad Karim Khan Agha

Cr. Rev. Application No.D-18 of 2017.

Ghulam Akber

Vs.

Learned Sessions Judge/Special Judge (N) Jamshoro & another

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| Applicant : Ghulam Akber | Through Mr. Altaf Sachal Awan, Advocate. |
| Respondents | Through Syed Meeral Shah, Addl. P.G. |
| Date of hearing : | 12.09.2018 |
| Date of order : | 12.09.2018 |

ORDER

MOHAMMAD KARIM KHAN AGHA, J.- By this Criminal Revision Application under section 435, 439 Cr.P.C., applicant Ghulam Akbar has assailed the order dated 13.05.2018, passed by the learned Sessions Judge, Jamshoro, on Criminal Miscellaneous Application No.22 of 2017, seeking release of case property i.e. Rikshaw (Super Star) registration No.D-16804, Engine No.8F-21818, Chassis No.0883287, Model 2016, whereby the said application was dismissed (the impugned order)

2. As per prosecution case, the aforesaid Rikshaw was seized in Crime No.37 of 2017 of Police Station Jamshoro whilst transporting a large amount of narcotics.

3. Mr. Altaf Sachal Awan, learned Counsel for the applicant contended that the order passed by the learned trial court is null, illegal, void and against the principle of natural justice; that the alleged case property / rikshaw is detained / parked at P.S. and there is apprehension of its damage at the hands of police; that according to law the vehicle/rikshaw cannot be detained for indefinite period; that the applicant is real owner of the said rikshaw and he has having some documents of the same, as receipt of sale has been issued in his name and no person other than the applicant will be claimant of

the said vehicle and that for all the above reasons the vehicle should be returned to him and as such his application may be allowed as prayed.

4. On the other hand, the learned APG supported the impugned order passed by learned trial court by arguing that the impugned order is passed after due appreciation of the material available on record and that there is no legal infirmity in the same; that the applicant has not been able to produce any complete valid title document of the subject vehicle to prove that he is the lawful owner and the application is liable to be dismissed.

5. We have heard the learned Counsel for the applicant as well as the learned APG and perused the record with their able assistance.

6. The operative part of the impugned order reads as under:

"After hearing, I have perused the material available on record, which vetted that two packets of charas were lying under the driver seat of rikshaw and two packets were recovered from the possession of co-accused. The packets of chars were collectively weighted, which came to 3800-grams. The trial has not yet been completed, hence provision of Section 32 of CNS Act is not applicable, on the contrary the Provision of Section 74 of CNS Act, 1997 provides bar for releasing of such vehicles during trial.

Since trial has not yet been completed, hence at this stage it could not be said that accused had no knowledge about narcotics, therefore, it is yet to be decided after the trial whether the said rikshaw was liable to be confiscated or otherwise.

In view of the above facts and circumstances, I am of the humble opinion that there is no prima facie in the instant applicant, hence dismissed."

7. It is to be noted that the vehicle was fully linked to the alleged offense as a large amount of charas was recovered from it and that the narcotics case is still continuing and if the accused are convicted the vehicle is liable to be forfeited under the Control of Narcotics Substances Act 1997. More importantly in our view there is no solid proof that the applicant is the owner of the vehicle as the vehicle is not registered in his name as required by law. The applicant has produced a "so called" affidavit from whom he allegedly purchased the vehicle which is not witnessed and the TO form is completely blank. Even otherwise the practice of not registering vehicles when purchased in order to avoid registration fees and other taxes and excise duty needs to be discouraged. Furthermore, in our view the applicant has not been able to point out any legal infirmity in the impugned order

8. Thus, in view of the above, the instant criminal miscellaneous application being devoid of merit was dismissed today in open court by short order, which reads as under:

"Parties advocates have been heard at length. They have concluded their arguments. For the reasons to be recorded later on, this criminal revision application is dismissed alongwith pending application(s)."