

*ORDER SHEET*  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Rev. A. No.D-08 of 2017.

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DATE	ORDER WITH SIGNATURE OF JUDGE
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For katcha peshi.

19.09.2017.

Mr. Abdul Hameed Bajwa, Advocate for the applicant.

Mr. Shahzado Saleem Nahyoon, Deputy Prosecutor General.

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At the outset, learned counsel for the applicant contends that impugned order dated 11.02.2017 is not in accordance with law, as it reveals that order for forfeiture / confiscation could not be reviewed or revived. Since scope of section 516-A Cr.P.C. is very clear that one can approach the Court for release of any case property after pronouncement of judgment.

2. It needs to be corrected *here* that provision of Section 516-A Cr.PC could be invoked for *temporary* custody (*superdagi*) during pendency of the trial hence would not be available to be pressed after final *conclusion* (judgment). Conclusion of an *inquiry* or *trial* shall bring a *full-stop* to Section 516-A while letting the door of Section 517 Cr.PC opened for *final* disposal of property. The Order under section 516-A Cr.PC shall also be controlled by final order, as passed under section 517 Cr.PC.

3. Learned trial Judge has rightly observed that once the judgment is pronounced same cannot be reviewed or altered but to correct / rectify a clerical error. (*section 369 of the Code*). We have seen the judgment and found that while passing order of forfeiture / confiscation, learned trial Judge has not examined the entire record / evidence and has not passed a speaking order with regard to *prima facie* existence that '*owner* had knowledge of offence, being committed, or was to be committed, by use of such *vehicle*. This is *pre-requisite* before passing an **Order** of confiscation under section 32 of the Control of Narcotic Substances, Act 1997. Absence of an *inquiry*, including a notice/hearing to *owner* would be always be sufficient for setting aside of such an *order* and remand of matter for a *proper* order.

4. Learned APG extends no objection.

5. Accordingly, impugned order dated 11.02.2017 is hereby set aside as well order of confiscating the case property i.e. car, passed while delivering judgment dated 06.06.2016 is also set aside. Learned trial Judge shall re-examine the aspect that applicant was having knowledge with regard to transportation of narcotic substance through said car and then pass fresh order as per evidence available on record within one month. Office shall send R&Ps of the case, lying in Cr. Appeal No.D-66/2016 to the trial Court, which shall be returned back to this Court after passing fresh order, as ordered above.

6. Needless, to mention that order with regard to awarding conviction to accused Abbas Ali, which is impugned in Cr. Appeal No.D-66/2016, shall remain intact and any observation made by the trial Court while deciding the matter afresh as ordered above, would not prejudice the case of either party.

The Cr. Revision Application stands disposed of.

JUDGE

JUDGE

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