

# THE HIGH COURT OF SINDH AT KARACHI

## **Criminal Revision Application No.95 of 2020**

Applicant : Ghaus Bux son of Sufar Khan, through Mr. Atiq-ur-Rehman Khan Advocate.

Respondent : The State through Mr. Khadim Hussain Kooharo, Additional Prosecutor General, Sindh along with I.O./SIP Manzoor Ahmed Chandio and SHO, Allah Dino of Police Station, Sukkun.

Complainant : Muhammad Javed Ahmed son of Abdul Abdul Wahab through Mr. M.A. Javed, Advocate.

Date of hearing : 14.12.2020

Date of Order : 16.12.2020

### **ORDER**

**Abdul Maalik Gaddi, J.** Through this criminal revision application, the applicant has assailed the legality and propriety of the order dated 17.04.020 passed by the learned Vth Additional District and Sessions Judge, Malir Karachi, in Criminal Miscellaneous Application No.42 of 2020, filed by the present applicant under Section 516-A, Cr.P.C for interim custody of subject vehicle with the prayer to hand over the custody of Oil Tanker bearing Registration No.TUC-997, Chassis No.FG8JDKT-11286, Engine No.J08EUGM-12612, Maker Hino, Model-2017, filled with thirty thousand (30,000) liters of diesel to him as the applicant was the owner of subject vehicle; however, learned trial Court after hearing the parties' Counsel dismissed the said application. Hence, this criminal revision application.

2. The facts of the prosecution case are that on 18.02.2020 complainant Muhammad Javed, lodged FIR at police station

Sukhan Industrial Zone Port Qasim. On 18.02.2020 at about 04:22 pm, he was informed by Security Officer Nadeem Javed Qureshi that during patrolling near Petro Well Company the security staff noticed that diesel is being stolen from main line of their company by digging earth with rubber pipe. Such information was also communicated to area police of police station Sukhan, upon that police party headed by ASI Ghulam Shabbir arrived at the spot. The complainant also reached at the scene of occurrence, meanwhile the Manager of Petro Well Company namely Pervez Farooq and watchmen Muhammad Rizwan and Nadir Ali also reached there, in their presence the complainant party noticed a tunnel 17 feet in length, one rubber pipe was passing which was joined with the pipe line of their company for sealing of diesel. It has further been stated that one Oil Tanker bearing registration No.TUC-997 loaded with thirty thousand liters was also parked at the distance of 100 feet away from the digging area and they have strong suspicious that the said diesel is the stolen property of their company. In the meanwhile the watchmen of night shift namely Abdul Jabbar also reached there and on inquiry he disclosed that about fifteen days ago he along with another watchmen Muhammad Essa stolen diesel from PEPCO pipe line and filled the same in Oil tanker. From the search of room and washroom of Petro Well Company two rubber pipes of 98 feet in length and 1½ in width having signs of diesel were also recovered.

3. Notice of this criminal revision application was issued to Prosecutor General, Sindh and Complainant.

4. SIP Manzoor Ahmed Chandio, who is Investigating Officer of the aforementioned crime appears and submitted report which has been brought on record. According to police report, the subject Oil

Tanker loaded with thirty thousand (30,000) liters diesel has been seized in the subject crime, which is now parked at police station Sukhan.

5. It is argued by the learned Counsel for the applicant that Oil Tanker is parked at police station and being explosive substance may blast at any time, therefore, the interim custody of Oil Tanker may be handed over to the applicant being owner of the subject vehicle purchased by him from one Imam Bux son of Suleman.

6. Learned Counsel for the complainant has opposed this criminal revision application on the ground that subject Oil Tanker being used in stealing of oil, which is owned by the complainant. The case property of the present crime and if Oil Tanker with diesel is returned to the applicant who is neither the owner of vehicle nor the last possessor, it will effect on the trial proceedings, therefore, he was of the view that under the circumstances and in view of the case under crime as committed by the applicant if Oil Tanker is returned to the applicant, complainant would suffer irreparable loss and seriously prejudiced.

7. Heard the learned Counsel for the parties at considerable length and perused the case papers so made available before me.

8. It reveals from the record that instant criminal revision application has been filed by the applicant being owner of the Oil Tanker filled with thirty thousand (30,000) liters of diesel along with copy of registration of documents of subject vehicle.

9. On perusal of record, it appears that subject Oil Tanker has been purchased by the present applicant from one Imam Bux son of Suleman, who was the registered owner of the subject vehicle and he has also filed his affidavit that he had sold out the subject

vehicle to the present applicant, therefore, he has no objection if the subject vehicle may be released to him, even otherwise, there is no other claimant of the subject vehicle before this Court.

10. It is noted that present applicant has moved an application for return of subject Oil Truck filled with diesel as it was seized by the police with relation to Crime No.122 of 2020 registered at police station Sukhan and that request was declined by the trial Court through impugned order; hence, this criminal revision application.

11. For resolving the question in hand, it would be conducive to reproduce Section 516-A Cr.P.C. which reads as under:

*“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. <sup>2</sup>]:*

*Provided that, if the property consists of explosive substance, 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 <sup>3</sup>]:*

*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 proceedings in relation to such offence before any authority or Court.]]]”*

Having perused above quoted section, it transpires that if a property regarding which an offence appears to have been committed or which appears to have been used for the commission of offence as produced before any criminal Court during any

inquiry or trial, it empowers the Court to pass orders, for the proper custody of the property; however, if the property is subject to speedy or natural decay, the Court may order it to be sold or otherwise disposed of if recording such evidence as thinks fit.

12. The second proviso of the said section further empowers the Court that if the property is dangerous drug, intoxicant, intoxicating liquor or any other substance is seized or taken into custody under any law for the time being in force, the Court either suo moto or on an application and under its supervision and control to obtain and prepare sample of the property for safe custody and production before it or to any other Court and cause destruction of the property under a certificate issued by it in that behalf.

13. The third proviso clarifies that on production of such sample before the Court in relation to the proceedings of the offence, the sample will present the whole property as if the whole property has been produced in Court.

14. It needs not to be said that normally entire property secured or seized by the investigation officer is required to be produced in the Court; however, there are some exceptions to the general rule as provided under second and third proviso. The discretion vested in the Court under the said provisos is to be exercised judiciously by giving notice to all concerned and taking into consideration the peculiar facts and circumstances of each case in order to safeguard the available right of the parties.

15. Reverting to the case in hand, vehicle in question which is filled with huge quantity of diesel is parked at open space of police station which could be dangerous not only for police officials but

also for people whose houses and shops are located around the police station.

16. In these backdrop, it would be appropriate that ten (10) liter diesel be secured from the whole of the diesel lying in the vehicle in question as sample which will represent the whole property and such exercise is required to be done in presence of accused as well as complainant under the memo within five (5) days, after receipt of copy of this order. The remaining diesel is to be sold out and sale proceeds would be deposited before the Nazir of trial Court until disposal of the case and the fate of same that which party is entitled for same, the same shall be decided by the trial Court. The learned Sessions Judge is directed to appoint any Magistrate for supervising said entire process and submit compliance report to this Court within fifteen (15) days without fail. I am of sanguine that trial Court shall decide the subject case within two (2) months' and no unnecessary adjournment shall be granted to either side, so also, compliance report be submitted to this Court through MIT-II.

17. As far as, the Tanker/Vehicle in question is concerned, it has been observed above that present applicant had purchased the subject vehicle from one Imam Bux, who had sworn his personal affidavit in favour of applicant that he has no objection, if the subject vehicle may be handed over to him. No other claimant of the subject vehicle is before this Court, therefore, the subject Oil Tanker bearing registration No.TUC-997 as stated *supra* be released/handed over to applicant upon his furnishing solvent surety in the sum of Rs.100,000/- and P.R. bond in the like amount to the satisfaction of the trial Court. However, the applicant is directed to produce the case property viz. subject Oil

Tanker before the trial Court as and when required by it. Applicant is further directed not to sell the subject vehicle till disposal of case.

18. The instant criminal revision application stands disposed of in above terms along with listed application. Office is directed to immediately send the copy of this order to the trial Court through some swift means for information and compliance.

JUDGE

*Faizan A. Rathore/PA\**