

IN THE HIGH COURT OF SINDH, AT KARACHI
Criminal Misc. Application 413 of 2019

Applicant : Syed Waleed Ali s/o Syed Tanveer Ali, through
Mr. Naheed Afzal Khan, advocate

Respondent No.1 : Ali Hafeez s/o Abdul Hafeez, through
Mr. Ghulam Rasool Khattak, advocate

Respondent No. 2 : Ali Rauf s/o. Muhammad Rauf (*nemo*)

Respondent No.3 : The State, through Mr. Siraj Ali Khan Chandio,
Additional Prosecutor General.

Date of hearing : 23.02.2022

Date of order : 25.03.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant and Respondent No.1 herein filed CrI. Revision Applications No. 6/2019 & 7/2019, respectively, for release of vehicle bearing Registration No. BNT-144, Maker Toyota Prius, Chassis No. ZBW41-3366761, Engine No. 2ZR-6224184, Model 2014 ("**subject vehicle**"), which is case property of Crime No. 656/ 2019, registered at P.S. Shahrah-e-Faisal under section 420/506, P.P.C. After hearing the learned counsel for the parties, the learned XIX- Judicial Magistrate, Karachi-East vide common order, dated 19.09.2019, allowed Cr. Misc. Application filed by the Respondent No.1, subject to furnishing surety in the sum of Rs. 10,00,000/- and P.R. Bond for the like amount for the purpose of production of said vehicle before the Court as and when required. Against that order, the Applicant preferred CrI. Revision Application No. 60/2019, which was heard and dismissed by the learned IVth Additional Sessions Judge, Karachi-East vide order, dated 03.10.2019. It is against the said orders, that the instant Criminal Misc. Application has been maintained by the applicant.

2. Learned counsel for the applicant has contended that the applicant is a bonafide purchaser of the subject vehicle having in possession its registration documents, but the police without any due process of law removed the same from his possession; that the sale of the subject vehicle is not disputed, the only dispute between respondents No. 1 & 2 is with regard to non-payment of sale consideration thereof by the respondent No.

2; that the impugned orders passed by the Courts below being contrary to law and facts are liable to be set-aside by restoring the possession of the subject vehicle in favour of the applicant on superdari basis.

3. On the other hand, learned counsel for respondent No. 1 has maintained that the respondent No. 1 is the registered owner of the subject vehicle; however, he has been cheated by the respondent No. 2 against whom he lodged an F.I.R.; as such, he was rightly handed over the custody of the subject vehicle on superdari by the trial Court.

4. Learned Addl. P.G. while adopting the contentions of the learned counsel for respondent No. 1 has stated that the respondent No. 1 is the registered owner of the subject vehicle; hence, the Courts below have rightly passed the impugned orders.

5. Heard the learned counsel for the parties and perused the material available on record with their assistance.

6. It is case of the applicant that he is the owner of the subject vehicle by virtue of sale transaction between him and one respondent No.2, who, after receiving sale consideration of Rs.23,50,000/- in cash, handed over subject vehicle to him alongwith original file and registration book and also issued sale receipt/delivery acceptance letter in his favour on 19.05.2019. It is further case of the applicant that the respondent No.2 did not get the said vehicle transferred on his name, which was in the name of first owner/respondent No.1. It is further case of the applicant that he applied for the transfer of the subject vehicle on his name but he was informed by the Excise Department that the respondent No.1 had already filed an application against the transfer of the subject vehicle on the ground that the cheque issued by the respondent No.2 was dishonoured. It is also case of the applicant that in the midnight of 26/27.08.2019, police officials of P.S. Shahrah-e-Faisal raided his house and seized subject vehicle in Crime No. 656/2019, lodged by the respondent No.1 against the respondent No.2.

7. Contrary to the claim of the applicant, it is case of the respondent No.1 that he is the first owner of the subject vehicle which the respondent No.2 took away alongwith its original registration documents on the pretext that in two or three days he would pay

the consideration thereof but he failed to fulfill his obligation; hence, he filed an application in the Excise Department and lodged the aforesaid F.I.R. whereafter the said vehicle was recovered by Shahrah-e-Faisal police.

8. It may be observed that an order under section 516-A, Cr.P.C. is of an interlocutory nature resorted to for the purpose of temporary arrangement so that the case property is saved from decay and is handed over to the person ex facie found entitled to its possession till final order is made under section 517, Cr.P.C. In the instant case, it is an admitted position that the subject vehicle is still in the name of respondent No. 1 in record, who being owner thereof lodged F.I.R. No. 656/ 2019 at P.S. Shahrah-e-Faisal under section 420/506, P.P.C., against the respondent No. 2. Prima facie, the respondent No. 2 was not legally authorized to sell out subject vehicle to applicant, as he was not its registered owner; hence, the alleged sale was apparently outcome of a fraud. The applicant may be a bonafide purchaser but he cannot be treated as lawful owner of the subject vehicle for the purpose of entitlement to *superdari* under section 516-A, Cr.P.C. as he certainly would have a right to recover his loss from seller of the subject vehicle/respondent No.2

9. For what has been discussed above, I am of the view that the impugned orders passed by the Courts below do not suffer from any illegality or irregularity requiring any interference of this Court under its inherent powers conferred by section 561-A, Cr. P.C.; hence, the instant Criminal Misc. Application is dismissed, accordingly.

JUDGE

Athar Zai