

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Misc. Application No.460 of 2023

Date

Order with signature of Judge

1. For order on office objection as at 'A'
2. For hearing of main case
3. For hearing of M.A No.8109/2023.

**08.11.2023**

Mr. Muhammad Asif advocate for the applicant  
Mr. Liaquat Ali Khan advocate for the respondent No.1  
Ms. Rahat Ehsan, Additional PG

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant Abdul Rauf has assailed the legality of the order dated 06.07.2023 passed by the learned II-Additional District & Sessions Judge Karachi East in Criminal Revision Application No.56/2023.

2. The learned counsel for the applicant argued that an order of further inspection of the car to determine the originality of the said vehicle from Honda Factory (Manufacturers of the car) Manga Mandi, near Lahore, be passed and directions may be made to the learned trial Court to conduct its inspection from the said manufacturer; that if the reports by the manufacturer match with the Chassis No. NFBFC66667MR081901 of the vehicle of the applicant, the custody may be handed over to the applicant. He lastly prayed for allowing the instant Criminal Miscellaneous Application.

4. Ms. Rahat Ehsan, APG assisted by Mr. Liaquat Ali advocate for respondent No.1 has contended that the trial Court has not made any illegality or irregularity in the impugned order, therefore, she prayed for dismissal of the instant Criminal Miscellaneous Application.

5. I have heard learned counsel for the parties and have also perused the material available on record.

6. It appears from the record that the criminal revision application filed under section 435 R/W Section 439-A Cr.PC. by the respondent Muhammad Khalid against an order dated 16.06.2023 passed by the learned III-Judicial Magistrate Karachi East, whereby the learned Judicial Magistrate declined the application under Section 550 Cr.PC bearing No NIL/2020 for release of vehicle bearing registration No BXW-690, Chassis No NFFFC66667MR081901 Engine No R18Z16929332 Maker Honda Civic Color Medium Silver Model 2021. The respondent being

aggrieved by and dissatisfied with the aforesaid order brought the *lis* before the revisional Court which was allowed vide order dated 06.7.2023, on the premise that the respondent was/is in last possession of the aforesaid vehicle and he has all original documents of the said vehicle and sale agreement which shows that applicant purchased the said vehicle from Zaigham Sohail. The revisional Court directed SHO to hand over the custody of the vehicle to the respondent on furnishing surety with a PR bond of Rs.400,000/-.

7. The learned counsel for the respondent contended that the respondent had purchased the said vehicle from Zaigham Sohail through the sale agreement dated 16 05 2023. He contended that the respondent handed over his vehicle No BMC-555 and also paid the cash amounting to Rs.18,50,000/- and the said buyer after taking possession of the vehicle as well as cash amount handed over the said vehicle along with its all original file to the respondent. He argued that he was a lawful bonafide purchaser enjoying the possession of the said vehicle from 16.05.2023 till 13.06.2023. He further argued that on 13.06.2023 Muhammad Akram came to the house of the applicant and claimed ownership of said vehicle and also called a police official of P.S. KIA who took over the said vehicle and seized the same. He argued that thereafter respondent approached PS and met with the duty officer and disclosed all documents in respect of said vehicle but the concerned duty officer said that he booked the said vehicle under Section 550 Cr.P.C. therefore; he could approach the concerned Court. However, upon approach, the learned Magistrate dismissed his application without applying of judicial mind. Thereafter he approached the revisional Court and succeeded in obtaining custody of the vehicle on *superdari*.

8. Perusal of the forensic examination report dated 13.6.2023 shows that said vehicle in question is re-punched after erasing the original digits which could not be deciphered due to deep grinding and now both parties claim to be ownership of the said vehicle, an excerpt whereof is reproduced as under:-

“..... 02. **OPINION:** *The chemical examination of vehicle has led that:*

(i). **CHASSIS NO:** *The present chassis serial (NFFFC66667MR081901) is self punched/fake. However, the piece of present chassis sheet is welded & replaced at the site of original chassis number.*

(ii). **CHASSIS NO:** *The last seven digits (----- 6929332) of present engine serial (R18Z1 6929332) are re-punched after erasing the original digits, which could not be deciphered due to deep grinding.*

(iii). **NOTE:** *Whereas (-) denotes the digit as it is.”*

9. To the aforesaid context, it is expedient to refer Section 33 of the Provincial Motor Vehicles Ordinance, 1965, which reads as follows:

*“33. Alteration in motor vehicle.(1) If a motor vehicle is so altered that the particulars contained in the certificate of registration are no longer accurate, the owner of the vehicle shall within fourteen days of the making of any such alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration of the vehicle to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein Provided that it shall not be necessary to report any change in the unladen weight of the motor vehicle consequent on the addition or removal of fitting or accessories if such change does not exceed two percent of weight entered in the certificate of registration.”*

10. In principle, welding and refilling the old chassis plate of the same vehicle amounts to altering the original chassis number and this factum has been admitted by both parties, however, one party has succeeded in obtaining the subject vehicle on *superdari* on the premise that the same was purchased but the respondent No.1 felt something fishy in the alleged transaction and lodged FIR No.502/2023 under Section 420 PPC at P.S Liaquatpur City, District Raheem Yar Khan. Such a copy of FIR has been placed on record. Learned counsel for respondent No.1 has referred to the written objections and submitted that the FIR No.729 of 2022 of P.S Cantt. Sarghoda was lodged on 16.10.2022 about eight months before he purchased the vehicle from one Zaigham Sohail as such he cannot be held responsible on the premise that he was in last possession of the vehicle. He further submitted that he has already furnished solvent surety to the tune of Rs.400,000/- with the trial Court and prayed for dismissal of the application.

11. Prima facie, the exercise of welding and refilling the old chassis plate of the same vehicle could not have been undertaken. Respondent submits that such alteration was not carried out by him but may be by the person from whom he purchased the vehicle as such he had already lodged the FIR. The liability and responsibility vest on the person making such alteration in any manner whatsoever. If the Respondent has purchased the same without taking due care and complying with the requirements of law, he cannot claim to be a bonafide purchaser. Needless to say, he may, if so advised, claim damages from the person from whom he purchased the subject vehicle. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of the Government of KPK through the Secretary Excise & Taxation Department, Civil Secretariat, Peshawar, and others Vs. Sarfaraz Khan and another (2020 SCMR 1420).

12. In view of what has been discussed above, the impugned order dated 06.7.2023 passed by the learned II-Additional Sessions Judge Karachi East in Revision Application No.56/2023 cannot be sustained.

Accordingly, this Criminal Miscellaneous Application is allowed and the impugned order dated 06.07.2023 passed by the learned 2<sup>nd</sup> Additional District & Sessions Judge Karachi East is set aside. Respondent No.1 is directed to surrender the subject vehicle with the trial Court forthwith and the trial Court is directed to hear the applicant and decide the fate of the vehicle under law keeping in view all the facts and circumstances of the case. In case of failure on the part of respondent No.1, the SHO concerned is directed to recover the vehicle the produce it before the trial Court for appropriate order. The aforesaid exercise shall be undertaken within two [02] weeks.

JUDGE