ORDER-SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 1934 of 2023

Rameez Iqbal
Versus
The State etc.

S.No.of order-proceedings	Dateof order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	19.03.2024	Mr. Jalal Haider Advocate for petitioner, Iftikhar Hussain Khan Advocate for respondents 2 and 3, Sardar Salman Ejaz, State Counsel, Munawar SI with record:

Arbab Muhammad Tahir, J: Through the listed petitionin terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner namely *Rameez Iqbal* impugns orders dated 10.05.2023 and 03.06.2023 passed by the learned Assistant Commissioner-Saddar, Islamabad and the learned Additional Sessions Judge-V, East, Islamabad, respectively. Operative paragraph 11 of second impugned order dated 03.06.2023 is reproduced for ready reference:-

> "11. In view of above the impugned order is not maintainable under the law and the Magistrate withdrawn, recalled his order without even filing an application of the review. However, this Court under Section 439 read with Section 435 Cr.P.C is empowered to examine the vires of the order passed by the inferior forum for its correctness, legality or propriety. Consequently, the impugned order is set aside and the revision preferred by the petitioner is accepted. Further, in view of above discussion and keeping in view of the facts and circumstances of the matter, the order dated 07.04.2023 passed by the learned Magistrate in favor of the petitioner was also passed without going through the record and obtained by concealment of facts by the petitioner also against the law; hence, liable to be set aside. Besides the seizure of the vehicle by the police is also found without reason particularly the same was not required in any criminal case, therefore, subject seizure of the vehicle was also illegal for which a civil suit was already *sub judice* before the civil court, wherein an injunctive order was passed in favour of respondent no. 2, therefore, the vehicle is to be reversed and returned to the last possessor i.e. Ali Raza, who taken from the respondent No. 2, therefore, prima facie the petitioner

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> attempted to obtain the vehicle by involving the police, whereas the rival claimant i.e. respondent No. 2 already claiming declaration, therefore, the vehicle is required to be returned to her being last possessor as Ali Raza did not appear consequently the application of respondent No. 2 is allowed accordingly".

2. Precisely, as per copy of report issued by the Police Monitoring System, vehicle *(Registration No. LEA,4957-Mini Pajero, green colour, chases No. H56A5000566, Engine No. 4A30221110, 650 CC)* ("**subject vehicle**") was impounded by the officials of Police Station Khanna Islamabad, on 02.04.2023 under Section 550 Cr.P.C from the possession of respondent No. 3. The petitioner then moved the learned A.C, Islamabad Saddar for interim custody of the subject vehicle through an application which was allowed vide order dated 07.04.2023. At this stage, respondent No. 2 Nasreen Begum filed an application before the learned AC Saddar-Islamabad for recalling of order dated 07.04.2023 and for the grant of interim custody of the subject vehicle to her. On the said application, learned A.C Saddar, Islamabad vide order dated 10.05.2023 recalled its earlier order dated 07.04.2023 and dismissed both the applications, one filed by petitioner and the second filed by the respondent No. 2. The petitioner assailed the said order through revision petition which was dismissed vide order dated 03.06.2023 passed by the learned Additional Sessions Judge-V, East, Islamabad. Hence, instant petition.

3. Learned counsel for petitioner argued that neither the respondent No. 2 is owner of the vehicle nor it was recovered from her possession; that there was no injunctive order in suit filed by respondent No. 2 against the petitioner; that under the law Judicial Magistrate retains no power to review its own order; that petitioner is bonafide purchaser and registered owner of the vehicle; and that both the impugned orders being against the law and facts are liable to be set aside. Learned counsel relied upon case law reported as 2023 SCMR 711.

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4. On the other hand, learned counsel for respondents No. 2 and 3 repelled the above submissions by contending that the illegality, attributed to the court of 1st instance has already been rectified by the learned Revisional Court; that under the law, vehicle taken in custody under section 550 Cr.P.C is to be returned to the person from whose custody it was taken into possession as neither the vehicle is a stolen property nor found in circumstance creating suspension regarding commission of any offence; that the proceedings under section 550 Cr.P.C were illegal, so observed by Revisional Court in its order, therefore, petition is liable to be dismissed. Learned counsel relied upon case law reported as 1997 P.Cr.L.J 1006, 1992 P.Cr.L.J 2137.

5. Heard. Record perused.

6. The *parties-to-lis* are closely related inter-se. Mst. *Nasreen Begum*, respondent No.2 is real mother of petitioner *Rameez Iqbal* and respondent No.3 *Ali Raza* whereas petitioner *Rameez Iqbal* and *Ali Raza* are step brothers as the lady had contracted two marriages, one with *Muhammad Iqbal*, father of petitioner *Rameez Iqbal* and second with *Khalid Mehmood*, father of respondent No. 3 *Ali Raza*. As per particulars available on record, petitioner and her mother are residing in Rawalpindi whereas petitioner's step-brother *Ali Raza* respondent No. 3 is residing in Islamabad.

7. It evinces from the record that dispute between the parties over the subject vehicle commenced in October, 2022 when on 08.10.2022 petitioner moved an application to the SHO, Police Station Civil Lines, Rawalpindi against his step-brother Ali Raza, respondent No.3 on the allegation of taking away subject vehicle by the latter with whom, as per contents of said application, he only had acquaintance and there was no mention of their inter se relation. The petitioner in the said application

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asserted to have handed over possession of the subject vehicle to respondent No.3 on 02.07.2022. Against the said action, respondent No.3, mother of the petitioner, on 22.10.2022, filed an application under section 22-A Cr.P.C against police officials of P.S. Civil Lines, Rawalpindi.

8. On 24.01.2023, respondent No.3 *Mst. Naseem Begum* filed suit for declaration and permanent injunction regarding subject vehicle against her son, petitioner. In the said suit, injunctive order was passed on 26.01.2023, once it was dismissed in default due to non-deposit of process fee vide order dated 06.03.2003. However, subsequently restored vide order dated 25.03.2023. During pendency of the suit, on 02.04.2023 subject vehicle was taken into possession by the officials of P.S/. Khanna, Islamabad under Section 550 Cr.P.C.

9. There is no contest on the point that parties are closely related to each other, already been in litigation over the subject vehicle in District Rawalpindi where initially petitioner filed an application against his step brother *Ali Raza* on the allegation of taking away his vehicle which was countered by the lady, respondent No.2, by filing an application in terms of Section 22-A Cr.P.C, followed by a civil suit, referred above, against the petitioned and during pendency of the same, subject vehicle was impounded by the officials of PS Khanna, Islamabad.

10. It is well settled principle that every criminal case is required to be seen in the light of its own peculiar facts and circumstances. In the present case, subject vehicle was impounded by the police under section 550 Cr.P.C. As mentioned above, there is no contest on the point that neither the subject vehicle is a stolen property nor involved in any criminal case, therefore, it is to be seen as to whether in such eventually, subject vehicle could be impounded under section 550 Cr.P.C which reads as under:-

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> ***"550. Powers of police to seize property suspected to be stolen :*** *Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission, of any offence, such police officer, if subordinate to; the officer incharge of a police station, shall forthwith report the seizure to that officer."*

11. Bare perusal of above provision of law shows that property can only be seized subject to the conditions if it is alleged to have been stolen, or found under circumstances which create suspicion of the commission of any offence. In the present case, none of the two pre-requisites exist and the action taken by the police, in the backdrop of the facts highlighted above, reflects highhandedness and abuse of authority. Reliance is placed upon case of *"Hassan Muhammad Versus Nazar Hussain*" [**2005 SCMR 1063**] wherein it was held that:-

> "In view of above, the question of title of the tractor and whether the conditions enumerated in the alleged executed agreement commencing the sale of tractor in question were complied with or otherwise squarely fall within the ambit of Civil Court. The parties may approach the Civil Court if so desired for the redressal of their grievances. **As mentioned hereinabove that the tractor in question could not have been seized under section 550, Cr.P.C and thus the action of police is not only unlawful but depicts highhandedness and abuse of authority.** It is worthwhile to mention here that the shops given by the petitioner have been rented out by Nazar Husain (respondent No.1) who is enjoying the rent of the said shops and besides that an amount of Rs 1,11,000/- was also received by him. Nazar Hussain (respondent No.I) is present and directed to hand over the tractor in question to Hassan Muhammad (petitioner) immediately. Abdul Latif, Sub-Inspector of Police is also present and is hereby directed to get the order implemented in letter and spirit."

12. On the touchstone of the principle *ibid*, question of title of subject vehicle squarely falls within the ambit of Civil Court where civil suit is already pending between the parties. In absence of pre-requisites for invoking provision of Section 550 Cr.P.C, which is an admitted position in the present case, subject vehicle could not have been seized under section

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550, Cr.P.C, thus, impugned action, on the face of it depicts highhandedness and abuse of authority on the part of local police. Another important aspect of the case is that after taking the subject vehicle in custody, it was mandatory to report it to the Magistrate under section 523 Cr.P.C without any loss of time but no such effort was made which is violation of Sections 523 and 550 Cr.P.C. Criminal proceedings cannot be initiated, at the behest of any party, to exert pressure or to resolve the civil dispute as per their whims.

13. It is well settled principle that this Court can declare acts of the police officers, to have been made without lawful authority and of no legal effect if they are found to be so and can also make any appropriate incidental or consequential order to effectuate its decision, such as *quashing* the FIR and investigation proceeding. Reliance is placed upon case of *"FIA through Director General, FIA and others v. Syed Hamid Ali Shah and others*" [**PLD 2023 SC 265**] wherein it was held that:-

> *"Article 199(1)(a)(ii) of the Constitution empowers the High Courts to judicially review the acts done or proceedings taken by the persons performing functions in connection with the affairs of the Federation, a Province or a local authority and if find such acts or proceedings to have been done or taken without lawful authority, to declare them to be so and of no legal effect. The registration of an FIR and the doing of an investigation are the acts of officers of the police department (a provincial law enforcement agency) who perform functions in connection with the affairs of a Province and are thus amenable to the jurisdiction of the High Courts under Article 199(1)(a)(ii) of the Constitution. The High Courts can declare such acts of the police officers, to have been made without lawful authority and of no legal effect if they are found to be so and can also make any appropriate incidental or consequential order to effectuate its decision, such as quashing the FIR and investigation proceeding. The acts of registering the FIR and conducting investigation by the officers of the FIA, in the present case, are also subject to said jurisdiction of the High Court, as they have been done by the officers performing functions in connection with the affairs of the Federation."*

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14. In view of above, proceedings initiated by local police under section 550 Cr.P.C in the present case are violative of mandatory provisions, therefore, not legally sustainable. Resultantly, while exercising powers vested in this Court in terms of Article 199 of the Constitution, proceedings initiated by the police under section 550 Cr.P.C are ***quashed***. As the main proceedings have since been declared to have been taken without lawful authority, subsequent proceedings, being offshoot, would be treated alike, consequently set-aside. The subject vehicle shall forthwith be handed over to respondent No. 3 *Ali Raza*, from whose custody it was taken into possession. Copy of this order shall be sent to the I.G, ICT for compliance and imparting necessary instructions to the police stations to refrain from indulging in private disputes of the parties and take necessary action against the delinquents in due course under intimation to this Court through the Registrar for perusal in Chamber within a period of one month from the receipt of this order.

15. Listed petition stands **disposed of** in above terms.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in the open Court on _____.04.2024.

JUDGE

A.R.Ansari

APPROVED FOR REPORTING

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