JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 1690/2018

TAFSEER HUSSAIN TARABI THROUGH LEGAL HEIRS ETC

Vs

MUHAMMAD RAFIQUE KHAN ETC

Petitioners by	**:**	**Ch. Masood Ali Dhamial, Advocate.**
Respondents by	**:**	**Mr. Sakhawat Hussain, Advocate for Respondent No.1.** **Mr. Asif Jahangir, Inspector Excise & Taxation.**
Date of hearing	**:**	**09.05.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, the Petitioners have challenged the Orders dated 04.08.2010, 13.09.2017, and 17.01.2018 **("Impugned Orders")** passed by Respondents Nos. 2 and 3.

2. Brief facts of the case, as per the contents of the petition, are that Respondent No.1 obtained a loan amount of Rs. 1,500,000/- (Fifteen Lac only) from the father of Shahzeb Tafseer/Petitioner No.1-a, namely Petitioner No. 1 (deceased) [hereinafter referred to as the **"Petitioner No. 1 (deceased)"]**, vide agreement dated 15.05.2009. As per the terms and conditions of the agreement, Respondent No.1 was bound to pay Rs. 150,000/- (One Lac Fifty Thousand only) monthly interest to Petitioner No. 1 (deceased) till target date 15.09.2009. Respondent No.1 also handed over all the original documents of his vehicle (Truck Hino, NWFP registration No. P-9841), i.e., original registration book, open transfer letter/deed, and complete original file as a guarantee. As per Clause No. 5 of the agreement, if Respondent No.1 failed to repay the loan amount of Rs. 1,500,000/- along with monthly interest by 15.09.2009, then Petitioner No. 1 (deceased) reserved the right to take possession of the Truck Hino (NWFP P-9841), sell it, and become its absolute owner. Due to Respondent No.1's failure to repay the loan amount and interest, Petitioner No. 1 (deceased) transferred the vehicle/Hino Truck (NWFP P-9841) in his name on 24.05.2010. Respondent No.1 subsequently lodged a criminal case (FIR No. 534

under Sections 420, 468 & 471 PPC) at Police Station Margalla on 08.09.2010 against Petitioner No. 1 (deceased). Respondent No.1 also filed an application before the Excise & Taxation Officer/Motor Registering Authority (ETO/MRA), ICT Islamabad, for cancellation of transfer of the said vehicle. Notices were issued to Petitioner No.1, but no one appeared. Vide the Impugned Order dated 04.08.2010, the ETO/MRA Islamabad cancelled the transfer of ownership of vehicle Hino Truck Registration No. P-9841 in the name of Petitioner No. 1 (deceased). Petitioner No. 1 (deceased) assailed the order by filing an appeal on 09.09.2010, which was dismissed for non-prosecution due to his arrest in the criminal case. He later filed a bail after arrest application before the High Court, Rawalpindi Bench, which was accepted on 23.11.2010. He also filed an application under Section 249-A Cr.P.C. before the concerned Illaqa Magistrate, which was accepted on 04.02.2014. Respondent No.1 challenged the acquittal order dated 04.02.2014 by filing Criminal Appeal No. 37/2014 before this Court. However, vide order dated 03.03.2016, the appeal was abated due to the death of Petitioner No. 1 (deceased). Petitioner No.1-a, Shahzeb Tafseer, then filed an application for setting aside the order dated 04.08.2010, which was dismissed vide the Impugend Order dated 13.09.2017. The Petitioners then filed an appeal before Respondent No.2, which was dismissed vide the Impugned Order dated 17.01.2018. Being aggrieved of the Impugned Orders, the Petitioners have filed the instant Writ Petition.

3. Learned counsel for the Petitioners submitted that the Impugned Orders passed by Respondents Nos. 2 and 3 are based on surmises and conjectures; that Petitioner No. 1 (deceased) was acquitted in the criminal case on 04.02.2014 and the appeal was abated on 03.03.2016; that the Petitioners filed an application under Section 12(2) CPC contending that the order dated 04.08.2010 was obtained through fraud, relying upon PLD 1999 Lahore 462 and PLD 1975 SC 331; that Respondents Nos. 2 and 3 failed to apply judicial mind while passing the Impugned Orders; and that the Impugned Orders are contrary to law and facts. Lastly, learned counsel prayed that the instant Writ Petition be accepted, and the Impugned Orders dated 04.08.2010, 13.09.2017 and 17.01.2018 be set aside.

4. On the other hand, the learned counsel for Respondent No.1 argued that the Impugned Orders dated 04.08.2010, 13.09.2017, and 17.01.2018 are well-reasoned and based on facts available on record; that no illegality or irregularity has been committed; and therefore, the petition is liable to be dismissed.

5. I have heard the learned counsel for the parties and perused the record with their able assistance.

6. It is an admitted fact that the father of the Petitioner No. 1-a extended a loan to Respondent No.1 and in lieu thereof, original vehicle documents were handed over along with a loan agreement dated 15.05.2009, stipulating repayment by 15.09.2009, failing which Petitioner No. 1 (deceased) would be entitled to take possession of the truck and sell it. As Respondent No.1 failed to repay the loan, the ownership of the vehicle was transferred in the name of Petitioner No. 1 (deceased) on 24.05.2010. In light of the agreement, the transfer of ownership was justified. However, the ETO Islamabad cancelled the registration of the vehicle on 04.08.2010 despite the fact that registration authority of the vehicle is based in Peshawar, thereby acting without jurisdiction.

7. It is also admitted that in consequence of the failure of the respondent No.1 to repay the loan, the father of the petitioner was entitled to have the vehicle in question seized and sold. It is to mention here with grave concern that the vehicle was registered with Motor Registering Authority Peshawar, but astonishingly the ETO Islamabad cancelled its registration, which is without jurisdiction and hence not tenable under the law. The Petitioners' claim is based on sound legal footing, and accordingly, the Impugned Order dated 04.08.2010 and subsequent orders dated 13.09.2017 and 17.01.2018 are set aside. The Motor Registering Authority, Peshawar, is directed to restore the names of the legal heirs of Petitioner No. 1 (deceased) as owners of the vehicle.

8. The instant Writ Petition is **accepted** in the above terms.

(MUHAMMAD AZAM KHAN)
JUDGE

Announed in the open Court on this _____ day of May 2025.

JUDGE

Sajid/--