

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Ayesha A. Malik, JJ

MUHAMMAD AKHTAR ALI---Petitioner

Versus

ADDITIONAL SESSIONS JUDGE, KOT ADDU, DISTRICT MUZAFFARGARH and others---

Respondents

C.P. No. 2337 of 2019, decided on 16th January, 2023.

(Against the order of Lahore High Court, Multan Bench dated 12.04.2019, passed in W.P. No. 1574 of 2019)

Criminal Procedure Code (V of 1898)---

---S. 516-A---Superdari of vehicle---Registered owner of a vehicle is prima facie entitled to the temporary custody (superdari) of that vehicle unless the dispute as to the title to the vehicle is decided by a court of competent jurisdiction.

Petitioner lodged an FIR for an offence under section 406, P.P.C. alleging therein that he handed over the subject car to a car dealer, for sale, who allegedly sold the car to respondent/alleged purchaser but did not pay the consideration amount to the petitioner nor was he returning his car to him. Thereafter, the petitioner, as well as, respondent (the alleged purchaser of the car) filed their respective applications for superdari of the said car, which was allowed by the Magistrate in favour of respondent.

Sindh Motor Vehicle Registration Authority ("Authority") placed on record report along with documents, which disclosed that the petitioner was the registered owner of the vehicle and there was no application for transfer of ownership of the vehicle in the name of respondent. The original papers of the vehicle had been sent to the petitioner as per report of the Authority. The argument that respondent had in his possession the original registration book of the vehicle was not sufficient to show that he was the lawful purchaser of the vehicle because the very allegation of the petitioner was that he had given the car for sale to the car dealer, who had not paid the consideration amount of the vehicle to the petitioner and had thus committed criminal breach of trust, therefore, any sale made by the car dealer in favour of respondent without a valid transfer deed executed by the petitioner, the registered owner, was prima facie of no consequence in respect of transferring the ownership of the vehicle. A registered owner of the vehicle was prima facie entitled to the temporary custody (superdari) of that vehicle unless the dispute as to the title to the vehicle was decided by a court of competent jurisdiction.

Petition for leave to appeal was converted into appeal and allowed, with the direction that the vehicle shall be handed over on superdari to the petitioner, subject to his furnishing surety bonds in the sum of Rs.2,000,000/- (rupees two millions) with one surety in the like amount to the satisfaction of the trial court.

M. Arshad Hussain Yousafzai, Advocate Supreme Court for Petitioner.

Aftab Alam Yasir, Advocate Supreme Court and Fozi Zafar, Additional A.G., Sindh for Respondents.

Date of hearing: 16th January, 2023.

ORDER

SYED MANSOOR ALI SHAH, J.---This case relates to superdari of Car Registration No.AZM-722 Maker Toyota Model 2013 Engine No.Y-806335 Chassis No.NZE-140-2166732.

2. Brief facts are that the petitioner lodged an FIR No.269/2018 dated 19.04.2018 for an offence under section 406, P.P.C. registered at Police Station Kot Addu, District Muzaffargarh alleging therein that he handed over the aforesaid car to Haji Azhar Habib, a car dealer, for sale, who allegedly sold the car to Rana Abdul Jabbar but did not pay the consideration amount to the petitioner nor was he returning his car to him. Thereafter, the petitioner, as well as, respondent No.4 (the alleged purchaser of the car) filed their respective applications for superdari of the said car, which was allowed by the Magistrate in favour of respondent No.4 on 31.01.2018. The revision petition against the said order filed by the petitioner was dismissed on 20.11.2018 and the same order was upheld by the High Court through impugned order dated 12.04.2019.

3. We have heard the learned counsel for the parties and examined the record. On 01.11.2022 we had issued notice to the Sindh Motor Vehicle Registration Authority ("Authority") to verify who is the registered owner of the vehicle as per its record. Through C.M.A. No.87/2022, the said Authority has placed on record report

along with documents, which discloses that the petitioner is the registered owner of the vehicle and there is no application for transfer of ownership of the vehicle in the name of respondent No.4. The original papers of the vehicle have been sent to the petitioner as per report of the Authority. The argument that respondent No. 4 has in his possession the original registration book of the vehicle is not sufficient to show that he is the lawful purchaser of the vehicle because the very allegation of the petitioner is that he had given the car for sale to the accused person mentioned above, who has not paid the consideration amount of the vehicle to the petitioner and has thus committed criminal breach of trust, therefore, any sale made by the said accused in favour of respondent No.4 without a valid transfer deed executed by the petitioner, the registered owner, is prima facie of no consequence in respect of transferring the ownership of the vehicle. Needless to say that a registered owner of the vehicle is prima facie entitled to the temporary custody (superdari) of that vehicle unless the dispute as to the title to the vehicle is decided by a court of competent jurisdiction.

4. Learned counsel for respondent No.4 submits that duplicate book of the vehicle has been obtained through fraud by the petitioner and submits that respondent No.4 may be allowed to initiate proceedings against the petitioner in this regard. Needless to say that respondent No.4 is free to avail any remedy, in accordance with law and does not require the blessing of this Court. It is, however, noted that any observations made in this order other than reliance on the record of the Authority, will not influence any such proceedings, if initiated by the said respondent.

5. For the above reasons, the impugned orders are set aside and this petition is converted into appeal and the same is allowed. The vehicle shall be handed over on superdari to the petitioner, subject to his furnishing surety bonds in the sum of Rs.2,000,000/- (rupees two millions) with one surety in the like amount to the satisfaction of the trial court.

MWA/M-7/SC Appeal allowed.