

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE QAZI FAEZ ISA

CRIMINAL PETITION NO. 802 OF 2015
(Against the judgment dated 14.09.2015 of the Peshawar High Court, D.I. Khan Bench passed in Cr.L.Misc.Q.No. 51-D, 52-D, 53-D, 53-D and 56-D of 2015).

The Director Intelligence and Investigation (Customs)
FBR, Islamabad and another.

....Petitioners

VERSUS

Fazal Ghani and others.

.... Respondents

AND

CRIMINAL PETITION NO. 22 OF 2016
(Against the judgment dated 14.09.2015 of the Peshawar High Court, D.I. Khan Bench passed in Cr.L.Misc.Q.No. 51-D, 52-D, 53-D, 53-D and 56-D of 2015).

Islam Bahadar.

....Petitioner

VERSUS

The State and others.

.... Respondents

In Cr.P.802/2015

For the Petitioners:

Dr. Farhat Zafar, ASC.
Mr. M.S. Khattak, AOR.
Khial Muhammad, Deputy Director,
Customs Intelligence, Peshawar.

For Respondent No. 1:

Mr. Salahuddin Malik, ASC.
Mr. Ahmed Nawaz Ch., AOR (absent).

In Cr.P.22/2016

For the Petitioner:

Mr. Salahuddin Malik, ASC.
Mr. Ahmed Nawaz Ch., AOR (absent).

For Respondent Nos. 2-3:

Dr. Farhat Zafar, ASC.
Mr. M.S. Khattak, AOR.
Khial Muhammad, Deputy Director,
Customs Intelligence, Peshawar.

On Court Notice:

For Govt. of KPK:

Mr. Abdul Lateef Yousofzai, AG, KPK.

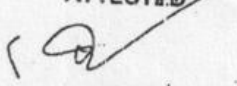
For the Federation:

Syed Nayab Hassan Gardezi, ASC.
(Standing counsel for AGP).

Date of Hearing

29th June 2016.

ATTESTED


Court Associate
Supreme Court of Pakistan

P.T.O.

ORDER

Ejaz Afzal Khan, J:- These petitions for leave to appeal have arisen out of the judgment dated 14.09.2015 of the Peshawar High Court, D.I. Khan Bench, whereby the learned Single Judge of the High Court dismissed Crl. Misc. Quashment Nos. 51-D and 56-D of 2015 and allowed Crl. Misc. Quashment Nos. 53-D and 55-D of 2015.

2. On 06.06.2016 we having heard the learned ASCs for the parties observed as under:-

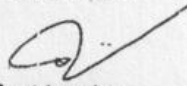
"2. The vehicles thus brought were provisionally registered and were allowed to be plied in Districts Bannu, Lakki Marwat and D.I. Khan. When the Customs Officers seized some of the vehicles it transpired that no duty and taxes leviable on such imported vehicle were paid. The case was accordingly registered, but since chassis numbers of some of the vehicles were found to have been tampered with cases under Sections 420, 468 and 471 of the PPC were also registered. The High Court in the latter cases granted custody of the vehicles to the persons mainly by following the provisions contained in Section 316-A of the Cr.P.C. without realising that such vehicles having been imported without paying taxes and duties could not be dealt with by any except Special Court."

4. Stance of the learned Additional Advocate General, KPK was that there was some tacit understanding between the Provincial and Federal Governments, but such an understanding, if any, would be surprising as could hold the Customs Act 1969, in abeyance otherwise than in a manner provided by Section 19 of the Customs Act. In the circumstances, we would like to hear the learned Attorney General for Pakistan as well as the learned Advocate General, KPK on the issues which is, prima facie, negation and an onslaught on Rule of Law."

2. Learned ASC appearing on behalf of the Director Intelligence and Investigation (Customs) in Criminal Petition No. 802 of 2015 contended that where vehicles seized were not lawfully imported and no taxes and duties leviable thereon were paid, the Customs officials were well within their right to seize them and proceed in accordance with law and that the Single Judge of the High Court acted against law by partially upholding the order of the learned Additional Sessions Judge granting custody of the vehicles to the respondent.

3. The learned ASC appearing on behalf of the respondent No. 1 in Criminal Petition No. 802 of 2015 contended that vehicles thus seized have not been lawfully

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imported nor have taxes and duties leviable thereon been paid, but the fact is that they were brought along by the Internally Displaced Persons [IDPs] and temporarily registered, as such, the Customs officials could not seize them. The story, the learned ASC added, spelt out by the FIR as to the manner of their seizure being an offshoot of concoction cannot be given much weight.

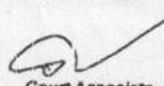
4. The learned Advocate General, KPK appearing on behalf of the Government of Khyber Pakhtunkhwa stated that the vehicles seized in this case were not of IDPs, as is evident from the version given in the FIR. The version, he added, that they were of IDPs appears to be an afterthought, if it is considered in the context of the facts and circumstances of the case.

5. Learned ASC appearing on behalf of the Attorney General for Pakistan contended that where vehicles have not lawfully been imported nor have the taxes and duties leviable thereon been paid, they could neither be disposed of by the learned Additional Sessions Judge under Section 516-A of the Cr.P.C. nor by the High Court while exercising powers under Section 561-A of the Cr.P.C.

6. The record reveals that vehicles bearing Nos. AFY-3521-Sindh and AFY-3529-Sindh of foreign origin were seized by the local police. When no documents showing their lawful import came forth, they were handed over to Customs Officials. Claim of respondent No. 1 in Civil Petition No. 802 of 2015 and petitioner in Civil Petition No. 22 of 2016 to the custody of the vehicles was somehow or the other allowed by the learned Additional Sessions Judge, but the High Court in quashment petitions under Section 561-A of the Cr.P.C. restored the custody of one of the vehicles to Fazal Ghani-respondent No. 1 in Civil Petition No. 802 of 2015 and the other to the petitioners in Civil Petition No. 802 of 2015, by holding as under:-

"Therefore, instant Cr.MQ Nos.51-D/2015 and 56-D/2015 being without substance are dismissed, whereas Cr.MQ Nos.53-D/2015 and 55-D/2015 are accepted, the impugned judgment dated 10.06.2015 in respect of vehicle claimed by respondent Islam Bahadur is set aside and the judgment of the learned Magistrate dated 09.5.2015 in this regard is restored and upheld."

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The question emerging for consideration of this Court is whether the vehicles seized have been lawfully imported and the persons importing them have paid the duties and taxes leviable thereon. The answer to the question is a simple no. When this being the case, the learned Additional Sessions Judge could not have passed an order for their disposal under Section 516-A of the Cr.P.C. nor could the High Court in the hierarchy affirm such order. In this view of the matter, we convert Criminal Petition No. 802 of 2015 into appeal, allow it, set aside the impugned judgment granting the custody of the vehicle to the respondents, and dismiss Criminal Petition No. 22 of 2016 as being barred by time.

Sd/- Ejaz Afzal Khan, J
Sd/- Qazi Faez Isa, J

Certified to be True Copy



11/7/16
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Supreme Court of Pakistan
Islamabad

2/7/16

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