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IN THE COURT OF ADDITIONAL SESSIONS JUDGE/JUDGE SPECIAL COURT
ORAKZAI, AT BABAR MELA

Superdari Petition No. 2/10 of 2021

Gul Shazada Vs State


Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order	02/02/2022	<p>Petitioner/Accused Gul Shazada in person along with Mr Jabir Hussain Advocate; Ghohar Hussain complainant/rival claimant along with Mr. Abid Ali Advocate and Syed Amir Shah DyPP for State, are in attendance.</p> <p>2. Arguments have already been heard; whereas, this is the disposal of captioned Superdari Petition.</p> <p>3. Brief facts of the case are such that Ghohar Hussain son of Haji Mirbat Khan r/o Dara Adam Khel, District Kohat has reported to the local police of PS Kurez Boya that he is running the business Coal Mining in the area of Chapar Mishti, Orakzai. On the 7th of August 2021, some unknown persons have stolen his articles, the details of which is; one LACH, RASI, TELA (coal mining gadgets), large size generator, one fridge and four batteries. He inquired about the incident of such theft and reported Gul Shazada (Petitioner) as accused on recovery of some of these articles. The day of report was 8th of August 2021, on the same date, Daily Dairy No.13 dated 08.08.2021 was entered. After laps of one month, the stated daily dairy was converted into FIR Bearing No. 21 dated 08.09.2021, under Section 379 of the Pakistan Penal Code, 1860 in the PS Kuriyaz Boya of Orakzai. Petitioner being accused was arrested and one day custody was granted for addressing the question of recovery. The accused was then remanded to judicial lockup; wherefrom, he presented application and was released on bail. Sequel to that, accused submitted application for Superdari of recovered item which was dismissed; hence, instant Criminal Revision is presented which is under consideration.</p>


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Addl. District & Sessions Judge
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4. On registration of Petition, record was requisitioned and notice to the complainant/respondent was issued. Accordingly, complaint appeared in person duly represented by counsel and was heard as rival claimant along with counsel for petitioner as well as DyPP for State.

5. Section-516 A of Criminal Procedure Code, 1898 is dealing the subject of order for custody and disposal of property pending trial. The recovered articles are not falling within the definition of "weapon of offence". This fact is admitted by the parties and supported by the record available on file as well. The scope of Section 516-A is limited and the Court, in normal course, would restore possession to the party from whose possession the article is recovered and question of title would be left open to be decided by Civil Court. Its theme settled by Law is that proper custody shall be the ultimate goal for which the Court has duly bound to issue order as it thinks fit with simple prerequisite of exercise of discretion judiciously. The petitioner Gul Shehzada is admittedly the last possessor of the articles recovered who purchased all such items against specified amount of Rs. 215,000 from one Sher son of Akbar Shah and he has disclosed this while recording statement before police under Section 161 of the Code of Criminal Procedure, 1898. He also annexed certificate of purchase with instant Criminal Revision Petition. The petitioner being last possessor on record and bonafide purchaser is proper person for custody of the articles.

6. As for as plea of rival clamant (complainant) is concerned, the same is discarded on various grounds. Without prejudice to the trial of the case for being stage of tentative assessment, the articles have been recovered by the complainant himself one day prior to the date of report incorporated in daily diary. This daily diary was converted into FIR after lapse of one long month with no plausible explanation; whereafter, the articles so taken by the complainant have formally been shown on recovery memo



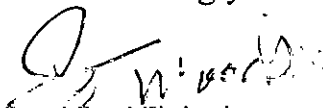
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Acting District & Sessions Judge
Orakzai at Hangu

and by this, sufficient length of time has been created for retaining the articles. It was the accused who applied for Superdari of the articles and the complainant was keeping mum on the apparent reason of being happy with the situation of retention of property in Police Station. No identification parade was either asked by complainant or conducted by the Police, which further speaks the volume of malafide on part of the complainant and police. Another astonishing fact that when accused had disclosed the name of the person from whom he has purchased these articles against sale consideration of Rs. 215,000, the Local Police had not bothered to inquire about the same nor the complainant recorded his statement under Section 164 of the Code of Criminal Procedure, 1898. Similarly, complainant when received notice responded that he being busy with relatives cannot attend the Court and appeared on second notice that is reflecting his conduct. In this background, the principle of "he who seeks equity must do equity" is fully applicable in circumstance of the case and Court is not inclined to consider the Superdari of articles in favour of complainant.

6. For what has been discussed above, instant Superdari Petition stands allowed. The articles enlisted shall be returned to petitioner subject to furnishing surety bonds to the tune of Rs. 60,000, with 02 sureties, each in the like amount to the satisfaction of SHO of Police Station Kurez Boya. The petitioner will remain bound to produce the articles whenever required to Police or Court. The plea of rival claimant being discussed above has already been turned down.

7. File of this Court be consigned to District Record Room after its necessary completion and compilation within the span allowed for; whereas, copy of this Order be placed on record of Police to be returned accordingly.

8. Announced in open Court.


Sayed Fazal Wadood,
AD&SJ/JSC, Orakzai at Baber Mela