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IN THE COURT OF IJAZ MAHSOOD, SCJ/JM,
ORAKZAI AT BABER MELA, HANGU

CASE NO. : 15/02 OF 2023

DATE OF INSTITUTION : 10.07.2023

DATE OF DECISION: 26.11.2024

STATE THROUGH: Waheed Ullah S/O Hadi Gul R/O Qoum
Mishti, Orakzai
------(Complainant)

VS

Gul Zali S/O Khayal Zali Khan R/O Qoum Beezot, Tehsil Lower,
Orakzai
------(Accused Facing Trial)

JUDGMENT
26.11.2024

Factual Background:

Instant case is raised upon FIR NO 37 lodged on 02/05/2023. The FIR is extracted from a Naqal Mad No 06 dated 26/04/23 of Police Station Kurez Boya. The narrative of the complainant reads that in the year 2003, he lent his tractor reg. C 1911 to Mr. Laiq Shah and Mr. Meena Badshah who required it to plough their lands. Since he was too young then, his father and grandfather were subsequently informed that the tractor had been stolen. That back in the time we were not adequately empowered to demand compensation as the persons named above were powerful and connected. Recently, the tractor stolen from us was recovered from the accused Mr. Gul

Zali Khan, a resident of lower Orakzai. All the documents and original plate of the vehicle in dispute are with him, and the defendant has been using the vehicle under a duplicate copy acquired from the excise office. The report further reads that the defendant was requested through many mediums extra judicially for the return of the vehicle and compensation but to no avail. The complainant has charged the defendant with theft, fraud, and occasioning heavy monetary loss to the former. On the strength of this report, a case was registered and submitted for trial under section 381 A and 411 of the Pakistan Penal Code.

Charge:

After compliance with section 241 CrPC, the accused persons were charged with the commission of offence of theft and dishonest acquisition of stolen property as defined by sections 381-A and 411, respectively.

The accused pled not guilty and claimed trial. Thereafter, the court allowed/invited the prosecution to produce its evidence in proof of the charge.

Witnesses/Exhibits:

Prosecution produced, and examined nine witnesses, including Mr. Khayal Hassan, Mr. Hassan Jan SHO, Afsar Ali

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Shah, Wahid Ullah, the complainant, Iltaf Ali ASHO, Intikhab Ali, Hashim Khah OII, Mina Badshah s/o Laiq Shah and Laiq Shah s/o Niaz Bahadur and exhibited the following documents;

Recovery memo in respect of transporter copy of tractor is Ex.PW-1/1, recovery memo in respect of tractor number C-1911 is Ex.PW-2/1, complete challan against the accused is Ex.PW-5/1, FIR is Ex.PA, site plan is Ex.PW-7/1, card of arrest of the accused is Ex.PW-7/2, application for physical custody is Ex.PW-7/3, application for recording confessional statement is Ex.PW-7/4 and identification certificate is Ex.PW-7/6.

After the prosecution had recorded and closed its evidence, the accused was confronted under Section 342 CrPC with incriminating evidence/material produced against him during trial. He denied the charge and rebutted the evidence as false.

The probative worth, consistency or otherwise of the testimonies of the witnesses is appraised as follows.

Reasoning:

Arguments heard and record perused. Prosecution was burdened with the duty to prove the elements of the charge beyond reasonable doubt. Judicial examination of the evidence



produced by prosecution followed by a ruling on the charge, is as follows:

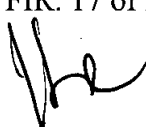
First, the court shall inquire into the charge of theft of vehicle as levelled under section 381-A.

Theft S-381-A

- i. Naqal Madh No. 06 of 26/04/23 through which the matter was originally reported to local police does not mention the complainant anywhere with reference to the act of stealing of the vehicle in question. To the contrary, it reads that Mr. Laiq Badshah and Mr. Meena Badshah, who happens to be witnesses for the prosecution, borrowed the vehicle and subsequently, when asked to return it, informed that it had been stolen, without naming the alleged thief. With reference to the accused, the report reads that the vehicle was recovered from him almost two decades later. The report does not attach the accused to the act of stealing of the vehicle.
- ii. Witnesses for prosecution also do not connect the accused to the act of stealing the vehicle. The complainant, testifying as PW-04, states that he was too young back in 2003, being born in 1996, and that only recently he found out that the tractor, that was reported

stolen by unknown persons, was in possession of the accused.

- iii. Mr. Mina Badshah took the witness stand as PW-08. From the initial report of the matter, he is one of the two persons from whose custody the tractor was allegedly stolen. He states in his direct statement that one Mr. Ghulam Sarwar forcibly took the tractor from him.
- iv. Mr. Laiq Badshah, appearing as witness no 09, is reported as the second custodian of the tractor at the time of occurrence. He also endorses the version of PW-08 that it was Mr. Ghulam Sarwar who forcibly took the tractor from them. Nowhere do these witnesses mention the accused in relation to the act of stealing.
- v. It is curious to note that the matter had never been reported to authorities until the instant proceedings. No complaint was lodged against Mr. Ghulam Sarwar, either by the complainant or by the witnesses from whose custody the tractor had reportedly been snatched.
- vi. In these circumstances, when theft is not alleged against the defendant, nor any witness has tied him to the act of stealing, it is safe to conclude that the charge is not attracted, hence it is dropped.



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Dishonestly Acquiring Stolen Property S-411:

Next, the court adverts to the charge of dishonestly acquiring stolen property. The offence includes among its elements the knowledge of the property being stolen. As discussed above, the charge of theft was not levelled against the present defendant, whereas the alleged actual perpetrator, Mr. Ghulam Sarwar was never prosecuted. In these circumstances, there is no direct material on the act of stealing, or of the property being stolen.

The court, naturally, shall attempt to determine the veracity of the charge through circumstantial evidence from the corpus of the case file.

- i. The tractor had been in the possession of the accused since 2003 until it was 'recovered' by the local police in the instant prosecution.

About the title, the complainant in his cross examination admits that the tractor was not registered in his name or in the names of his father and grandfather. He further admits it that through Superdari he acquired transfer letter, and registration book of the tractor. He adds that the registration documents and transfer letter that he thus acquired were not in his name either.

Complainant continues in his cross-examination that he went with documents acquired through Superdari and acquired a registration copy in his name from the excise department. He admits that he did not acquire leave of the court for transferring the title to his name pending the trial. He further admits that none of his witnesses have held him as the owner of the tractor in their respective statements.

The investigation officer, testifying as PW-07, concedes that the transfer letter that he recovered during investigation was not in the name of the complainant, his father or grandfather. He further admits that he never inquired into the status of the documents he recovered from the accused from the excise authorities. To conclude the IO's statement in his own words, *'it is correct that during my whole investigation are on available record there is no single document on record which could prove the ownership of the tractor of complainant'*.

To summarize, there is not a shred of evidence on record, neither documentary nor oral, to the effect that complainant or his patriarchs were the owners of the tractor in question. The registration book presently held by the complainant was acquired on the strength of Superdari order of the court after the tractor was *'recovered'* by police from the accused.

Similarly, there is no evidence of any purchase of the tractor by the accused with knowledge of it being a stolen one. In fact, the accused had been in possession of the vehicle and a copy of registration book duly issued by excise authorities for over two decades when the local police took the vehicle and its documents into custody.

Custody of the Vehicle:

The disputed vehicle was seized from the accused on 27/05/23 during the prosecution of the instant FIR, and was handed over to the complainant through order dated 15/07/23. Thereafter, he admits to have acquired registration documents from excise department, presumably on the strength of the court's order. Subsequently, pursuant to complaints of abuse the vehicle, it was ordered by the court to be parked in the local PS, and accordingly, complainant delivered it on 28/09/24.

Prior to instant proceedings, the accused had been in possession of both the vehicle and its documents for over two decades. The question as to how and why a Superdari order of the court was received as sufficient proof for conveyance of title etc. is a matter for another inquiry.

The law is sufficiently settled on the fate of vehicles seized in prosecution of a criminal case, especially where the

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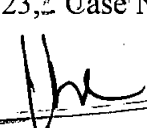
prosecution fails to establish the charge. In brief, a vehicle recovered in pursuance of criminal charges is to be returned to the custody of the *defendant* when he acquitted of the charges filed against him.

In *Shaheen Begum Vs SHO* and others, reported as 2005 MLD 176, the Sindh High Court eloquently summarized the proposition:

'Scope of 516-A was limited and the court in normal course would restore possession to the party from whose possession the vehicle was recovered and question of title would be left to be decided by the civil court.'

Before the court are two alternatives: first, to let the status quo continue in respect of the vehicle i.e. let it remain parked at the local PS at the mercy of elements of nature, and out of its functional utility for the next 04 to 06 years, a rough but modes estimate of the life span of civil litigation for its title;

Second, to employ the wisdom of honorable Sindh High Court and return the vehicle to the defendant, at least until civil litigation, if preferred by any side, conclusively settles the controversy surrounding the title.

Senior Civil Judge
Orakzai at Baber Mela


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Ruling:

In view of the foregone, the prosecution has failed to establish any element of the charge. Case is dismissed. It is lamentable that such a poorly founded case, with no evidence altogether, consumed valuable time and resources of multiple persons and departments for such a long period.

Defendant stands acquitted of the charge; his sureties are discharged of their liability under the bond and the vehicle be returned to him in compliance with due process.

File be consigned to the record room after its completion and compilation.

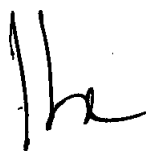
Announced
26.11.2024


(Ijaz Mahsood)
SCJ/JM,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this order consists of ten (10) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated:26.11.2024


(Ijaz Mahsood)
SCJ/JM,
Orakzai (at Baber Mela)