IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT

MR.JUSTICE CH. EJAZ YOUSAF CHIEF JUSTICE

CRIMINAL REVISION NO.3/Q OF 2003

Zaman son of Suleman Ali Caste Hazara,resident of Alamdar Road,Syed Abad, Quetta.	--	Petitioner
	Versus	
The State	--	Respondent
Counsel for the petitioner	--	Mr.Tahir Hussain Khan, Advocate
Counsel for the State	--	Mr.Ghulam Mustafa Mengal,Additional, Advocate General,
No.date of FIR and Police station	--	No.8 dt;30.5.2000 P.S.Bijli Road,Quetta.
Date of the order of Trial Court	--	17.5.2003
Date of institution	--	30.5.2003
Date of hearing	--	26.6.2003
Date of decision	--	26.6.2003

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JUDGMENT

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This revision is directed against the judgment, dated 17.5.2003 passed by the learned Additional Sessions Judge-V, Quetta whereby, he while convicting the accused persons for the charge under section 17(3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 read with section 365 PPC has also ordered for confiscation of vehicle bearing Registration No.QAE-7414, allegedly used in the crime.

2. Facts of the case, in brief, are that on 30.5.2000 report was lodged by one Haji Delair Khan with police station Bijli Road, Quetta wherein, it was alleged that on 30.5.2000 at about 6.00 a,m. three persons entered into his house situated at Shahbaz Town, Quetta, took him on gun as well as dagger points, tied his hands and snatched away certain household goods alongwith golden ornaments and cash worth Rs.35,000/- detailed in the report. After registration of the case, investigation was carried out and on completion thereof the accused persons, who were three in number, were challaned to the Court for trial.

7. It has been mainly contended by the learned counsel for the petitioner that though the vehicle in question, owned by the petitioner, was released to him on Superdari by the High Court vide order dated 2.3.2001, which fact was well within knowledge of the learned trial Judge yet, before passing the impugned order, neither any notice was issued to him nor was he heard. It is further his contention that the vehicle was not liable to confiscation. He has maintained that the omission to do the needful has culminated in gross miscarriage of justice and has rendered the impugned judgment as untenable so far as confiscation of the vehicle in question is concerned

8. Mr.Ghulam Mustafa Mengal, Additional Advocate General, Balochistan, candidly conceded that no notice before passing the impugned order, was issued to the petitioner thereby calling upon him to explain his position. He, however, stated that since the accused persons had not denied ownership of the vehicle and there was no other claimant of the vehicle, therefore, the learned trial Judge did not, perhaps, think it necessary to search for the real owner or further inquire into the matter.

3. Charge was accordingly framed against the accused persons which they pleaded not guilty and claimed trial.

4. At the trial, the prosecution in order to prove the charge and substantiate the allegations leveled against the accused persons produced ten witnesses, in all, whereafter they were examined under section 342 Cr.P.C. The accused persons, however, failed to lead any evidence in their defence or to appear as their own witnesses, in terms of section 340(2) Cr.P.C.

5. On the conclusion of the trial, the learned trial Judge convicted the accused persons and sentenced them to certain punishments detailed in the impugned judgment besides, confiscating the vehicle, in question, to the State.

6. I have heard Mr.Tahir Hussain Khan, Advocate, learned counsel for the petitioner, Mr.Ghulam Mustafa Mengal, learned Additional Advocate General, Balochistan, and have also gone through the record of the case with their assistance.

He, however, added that since the vehicle in question was used in the crime, therefore, it was rightly confiscated by the learned trial Court.

9. I have given my anxious consideration to the respective contentions of the learned counsel for the parties. Though the learned counsel for the petitioner has tried to canvass that the vehicle was not liable to confiscation because the petitioner, in no way, was involved in the crime and thus he could not have been deprived of his property by way of penalty yet, at this stage I do not deem it appropriate to consider the contention because firstly; it relates to merits of the case and secondly in view of the order, which I propose to pass in this case any observation made by this Court may prejudice the case of either of the parties before the trial Court. However, the fact cannot be lost sight of that neither any notice before passing the impugned order, was issued or served on the petitioner nor any attempt was made by the learned trial Judge to find out as to who was owner of the vehicle. The learned Additional Advocate General, after consulting the record, has confirmed that no notice before passing the impugned order was issued to the

petitioner. The learned trial Judge while passing the impugned order has observed that since ownership of the vehicle was not denied by the accused persons and it was found to have been used in the crime, therefore, it was liable to be confiscated. To my mind, before proceeding to decide the point in issue i.e. as to whether the vehicle was liable to confiscation or otherwise it was incumbent on the trial Court to have served owner of the vehicle or the claimant whosoever, he was, with the notice thereby calling upon him to show cause as to why the vehicle be not confiscated? The learned counsel for the petitioner has stated that vehicle in question was released to him on Superdari by the High Court vide order dated 2.3.2001 which implies that the petitioner must have, earlier, applied to the trial Court for its release and being unsuccessful had approached the High Court and if it was the position then a copy of the release order must have been available on record. In the circumstances, the learned trial Judge should have been alive to the situation and have passed the order after hearing the petitioner. It would not be out of place to mention here that had the vehicle been not released

to the petitioner the position might have been other way round and in such case it could have been said that since there was no claimant of the vehicle and ownership was not disputed by the accused persons, [redacted]fore, there was no need to search for the owner but in the circumstances of the instant case service of notice upon the petitioner, was a must.

10. It is well settled that discretion to deprive a person of his property has to be exercised in a judicial manner having regard to the legal maxim "audi alterum partum" (no body should be condemned unheard) and the person effected has to be served with a notice to show cause before any action is taken against him. This view receives support from the following reported judgments:-

(i) Haji Abdul Razzak vs. Pakuta PLD 1974 SC 5
(ii) Iqbal Elahi vs. The State 1987 SCMR 1274
(iii) Muhammad Yousaf vs. The State 1998 PSC (Crl) 5
(iv) Haji Ziauddin vs. The State 1990 P.Cr.L.J 1213

11. Since in the instant case the learned trial Judge has not adopted the proper procedure and has passed order without affording opportunity of hearing to the person effected, therefore, the impugned judgment cannot

be sustained. The same, therefore, to the extent of confiscation of the vehicle, is set aside and the case, with consent of the parties, is remanded to the trial Court for its decision afresh, in accordance with law.

(Ch. Ejaz Yousaf)
Chief Justice

Quetta,dated the
26th June, 2003

FIT FOR REPORTING

ABDUL RAHMAN/**

CHIEF JUSTICE