



Crl.R.C.No.2199 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2024
PRONOUNCED ON : 16.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2199 of 2023

Kishore K.Swamy

... Petitioner

Vs.

State Rep by
The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Chennai District.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records in Crl.M.P.No.41138 of 2022 dated 19.12.2022 on the file of the Additional Chief Metropolitan Magistrate, Egmore and set aside the same.

For Petitioner : Mr.C.Iyyappa Raj

For Respondent : Mr.S.Raja Kumar,
Additional Public Prosecutor

ORDER

Challenging the impugned order, dated 19.12.2022 in Crl.M.P.No.41138 of 2022 passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, this criminal revision case is



filed.

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2.This Court by order, dated 19.03.2024 had passed the following order:

“The contention of the petition is that the petitioner has been falsely implicated as though the petitioner has posted some derogatory, defamatory and abusing post in his Facebook and twitter on 01.11.2022 against the Hon'ble Chief Minister, for which, the petitioner was arrested on 21.11.2022. The petitioner in this case in Crime No.118 of 2022 for offences under Section 153, 294(b), 505(1)(b) of IPC and 67 of the Information Technology (Amendment) Act, 2008.

2. The learned counsel for the petitioner submits that as regards Sections 153, 294 (b) of IPC and Section 67 of the Information Technology (Amendment) Act, 2008 are bailable offence and as regards Section 505(1)(b), it is a not cognizable offence.

3. Considering this aspect, the petitioner was granted bail on 23.11.2022 within two days. During the petitioner's arrest his Samsung phone was seized and detained by the respondent police. The petitioner thereafter filed a return of property petition in Crl MP No.41138 of 2022 before the Trial Court. The Trial Court, by order dated 19.12.2022 dismissed



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the petitioner's petition for the reason and observed in paragraph 6 as follows:

vi) On perusal of the records is found that the case is under investigation and the property involved in the offence is about to sent to the Forensic Lab by the investigation agency for the purpose of finding incriminating material in it and in such situation this courts holds that returning the petition mentioned property would cause hindrance to the investigation. Therefore, this court holds that it is not just and proper to allow this petition at this juncture.

4. Learned counsel for the petitioner further submits that this order came to be passed on 19.12.2022 and it is more than a year now. He further submits that in this case, investigation is already completed and charge sheet to be filed and the petitioner's mobile phone was not subjected to any of forensic examination. In view of the same, detention of the petitioner's phone is not required. He further submits that the petitioner is a media person and mobile phone is used for calling people, exchange of news and the bank and other details are stored in it. Nowadays, the mobile phone is not only used for answering calls, it has become a part of once personal life for various activities and further keeping the phone idle without any usage will make the phone unusable and would serve no purpose. Further, the learned counsel relied upon the decision of the Apex Court in the case of Sunderbhai Ambalal Desai vs State of Gujarat reported in 2002 Supp(3) SCR 39 and submitted



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that the phone has to be returned to the petitioner.

5. The respondent/investigating officer has filed his counter. Which reads as follows:

“It is humbly submitted that, in the above X (Twitter) handle of the petitioner/accused posted a tweet on 01.11.2022 @8:01 PM as “இவ்வளவு மழை பெய்யுது மக்களைச் சந்தித்து ஆறதல் சொல்ல நேரில் வராத கடலையை புளியந்தோப்புங்கோத்... அப்படின்னு அழைக்கலாம்தானே-” used filthy words which is used a unparliamentary words in North Chennai as tenet word against the Hon'ble Chief Minister of Tamil Nadu. The above content was present in the URL <https://twitter.com/sansbarrier/status/1587452214507106305> and it was liked by 1367 persons and re-tweeted by 271 persons.

4.It is humbly submitted that, 4 notices U/s. 41(A) Cr.PC. were served to the petitioner/accused and was instructed to appear before the investigation officer on 05.11.2022, 07.11.2022, 09.11.2022 and finally on 14.11.2022. Despite sending 4 notices to the petitioner/accused, he did not appear before the I.O. till 20.11.2022. In the meantime, another case has been registered against the petitioner/accused for the fake and communally sensitive video cum tweet posted on the Twitter account @sansbarrier on derogatory comments/posts, and the arrest of the accused became necessary u/s. 41(1)(b)(ii) and 41(A)(4). The accused absconded and was traced at a resort in Puducherry. Arrest became



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necessary and he was arrested on 21.11.2022 at 5.00 hrs and remanded to judicial custody. During the investigation, the mobile phone used by the accused/petitioner was seized from him vide seizure mahazar and the same was submitted to the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai, vide B.No.1996/2022 dated 23.11.2022.

5.It is submitted that, the petitioner/accused already filed a petition u/s 451 CrPC for the return of seized property before the Additional Chief Metropolitan Magistrate court and the same was dismissed on 19.12.2022.

6. It is submitted that, the petitioner/accused was detained under Act-XIV vide Letter No.174/BCDF GISSSV/2021 dated 24.06.2021 TPDA No.2627/25.06.2021 @ 11:40 hrs for his active involvement in the Crime Number.258/2020 U/s.509 IPC @ 509, 354D of IPC & Sec.4 of TNPHW Act. The petitioner/accused had been involve in 6 more cases in Central Crime Branch, Greater Chennai Police in Crime Numbers:58/2019, 223/2019, 284/2014, 258/2020, 99/2019, 318/2019. All these cases were registered for posting abusive, derogatory and filthy comments at the X(handle) @sansbarrier. He is continuing the same offence even though detained under Act XIV.

7.It is submitted that, with the reported antecedents in his credit vide above crime numbers and the investigation records available with us in the reported cases against this accused/petitioner Kishore K Swamy, clearly



established the ownership of the Twitter handle@Sansbarrier. Another request was submitted to X Corp (formerly Twitter Inc) to obtain the IP logs and user details of X(Twitter) handle @sansbarrier on 08.01.2024, and a reply is awaited for the same.

8.In this case, the digital electronic evidence available in the mobile device seized from the petitioner/accused is considered as the primary documentary evidence. The ownership of X(Twitter) handle @sansbarrier was confirmed from the analysis report by Forensic Science Laboratory in another case against the petitioner in CCB Cr.No.318/2019.

9.It is submitted that, the Hon'ble Justice Tr,Dhandapani from Hon'ble High Court of Madras observed the facts and circumstances of the case in Crl.OP No.12604 of 2020 and Crl.M.P Nos.5160, 5161 & 5333 of 2020 and mentioned in the order dated 27.04.2021 against the petitioner/accused that "A bare perusal of the complaint reveals that several posts have been made by the petitioner on his Facebook and Twitter accounts denigrating and demeaning the modesty of women. The posts, which are in vernacular in Facebook and Twitter, reveals that the petitioner has made such of those statements targeting the defacto complainant. Even a bare reading of the said posts leaves a sour taste in the mouth of this Court, as those statements are overly derogatory in nature and it demeans the modesty and chastity of the women folk". This clearly shows that the petitioner/accused is a habitual offender who is posting derogatory, filthy



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and unparliamentary comments on social media just for the sake of publicity. The petitioner/accused's offensive attitude should be prevented to restrict the cause and effects of further offences.

10.It is submitted that, the case is under investigation. The requested property is the primary evidence of this case to prove the commission of the offence. The mobile itself contains primary documentary evidence of the Twitter handle and its posts and secondary documentary evidence of screenshots from the exhibit during the time of the arrest. If it is returned to the petitioner the available evidence will be tampered by the petitioner/accused. Since the mobile phone has to be submitted as evidence during the trial, it cannot be returned to the owner/petitioner/accused until the completion of the trial. So, it is humbly requested that this Hon'ble Court may be pleased to accept the counter and dismiss the petition filed by the accused/petitioner and thus render justice.

6. The learned Additional Public Prosecutor submitted that in this case, investigation has been completed and charge sheet to be filed shortly. He seeks some time to produce the narrative of the charge sheet prepared by the Investigating Officer.

7. Post the matter on 27.03.2024.”



3.In continuation and conjunction with the above order, this Court is passing the following order.

4.This Court considered the rival submissions and perused the materials available on record.

5.The respondent Police filed counter, dated 27.03.2022, in which, derogatory postings by the petitioner reproduced. It is seen from para 8 of the counter that the mobile phone of the petitioner is a primary evidence during trial. Further the respondent Police (Crime No.258 of 2020) had confirmed the ownership of Twitter handle @Sansbarrier and another request was submitted to X Corp (formerly Twitter Inc) to obtain the IP logs and user details of X (Twitter) handle @sansbarrier on 08.01.2024. The mobile device seized from the petitioner is a primary evidence which is confirmed from the analysis report of Forensic Science Laboratory in yet another case in Crime No.318 of 2019.



6.It is seen that the case in Crime No.118 of 2022 is under investigation and to prove the case, the primary evidence is very much required. It is seen that the mobile phone of the petitioner contains objectionable posts, screen shots taken from it will confirm the same. The apprehension of the prosecution is that if the petitioner's mobile is returned, the same will be tampered by the petitioner. Further, he will continue to use the mobile and commit similar offences.

7.To be noted, the petitioner involved in six more cases in Central Crime Branch, Greater Chennai Police in Crime Nos.58 of 2019, 99 of 2019, 223 of 2019, 284 of 2019, 318 of 2019 and 258 of 2020 and the present case is Crime No.118 of 2022. All the cases registered for posting abusive, derogatory and filthy comments at X (Handle) @sansbarrier. Despite registration of such cases and also detaining the petitioner under Act 14 *vide* letter No.174/BCDF GISSSV/2021 dated 24.06.2021 TPDA No.2627/25.06.2021, it is seen that there is no change on petitioner's activity. On the other hand he continues to post similar objectionable postings using their mobile phone.



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8.In view of the above, this Court comes to the conclusion that postings in the Twitter affects the society at large and the mobile phone of the petitioner is very much required for trial since it is a primary evidence.

9.In the result, this criminal revision case stands dismissed confirming the impugned order, dated 19.12.2022 in Crl.M.P.No.41138 of 2022 passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

16.04.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

- 1.The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Chennai District.
- 3.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
CrI.R.C.No.2199 of 2023

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