



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD)No.166 of 2018

Prabhu Singh

: Petitioner

Vs.

The State rep. by
Sub Inspector of Police,
Kaliyakkavilai Police Station,
Kuzhithurai.

: Respondent

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of the Criminal Procedure Code praying to call for the records relating to the impugned order dated 28.02.2018 made in Cr.M.P.No.1227 of 2018 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, set aside the same and consequently, direct the Trial Court to return the property concerned in Crime No.31 of 2018 on the file of the Sub Inspector of Police, Kaliyakkavilai Police Station, Marthandam, Kanyakumari District.

For Petitioner

: Mr.H.Thayumanaswamy

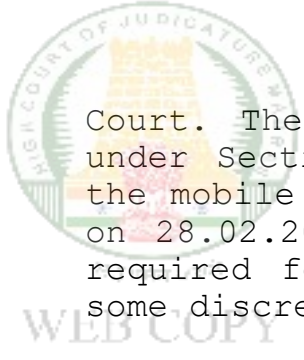
For Respondent

: Mrs.S.Bharathi,

Government Advocate (Crl.side)

ORDER

On the complaint lodged by the petitioner, the respondent police registered a case in Crime No.31 of 2018 on 09.02.2018 under Section 379 of the Indian Penal Code against one Josephin. It is the case of the petitioner that Josephin was working in his Shop and since she was not regular to work, he took action against her and, therefore, she left her services. It is the further case of the petitioner that Josephin came to the Shop on 07.02.2018 around 09.30 p.m., in the guise of purchasing, but, however, did not purchase anything from the Shop. Thereafter, the petitioner was searching for his mobile and did not find the mobile. Fortunately, he had installed CCTV network in his Shop and, therefore, he ramped the visuals and found Josephin taking the mobile from the cash counter and quietly walking away. The petitioner lodged a complaint and submitted the CCTV footage to the police, based on which, First Information Report was registered and Josephin was arrested on 09.02.2018. On her confession statement, the mobile was recovered from the kitchen of her house and was produced before the Trial



Court. The petitioner filed a petition in Cr.M.P.No.1227 of 2018 under Section 451 of the Code of Criminal Procedure for return of the mobile phone and the same has been dismissed by the Trial Court on 28.02.2018 on the ground that the data in the mobile phone is required for further investigation of the case and that there is some discrepancy in the description of the mobile.

2. Heard Mr.H.Thayumanaswamy, learned counsel for the petitioner and Mrs.S.Bharathi, learned Government Advocate (Criminal side) for the respondent.

3. On a reading of the First Information Report, it is seen that the CCTV footages have been submitted by the petitioner to the Police. Only thereafter, the police registered the First Information Report, arrested the accused and recovered the mobile phone from the kitchen of the accused. This is a case of simple theft. The victim of a crime cannot be made to run from pillar to post on such fictitious reasonings, as that would bring disrepute to the administration of criminal justice system and people will start losing faith in the efficacy of the system. This Court is unable to understand as to how the data in the mobile phone is going to be of use to prove the offence when the allegation against the accused is not theft of data, but theft of an article.

4. In the result, this revision is allowed and the impugned order dated 28.02.2018 in Cr.M.P.No.1227 of 2018 is set aside and the learned Judicial Magistrate No.1, Kuzhithurai is directed to hand over the mobile phone to the petitioner after taking photographs of the same and certifying the said photographs. The photographs can be used as secondary evidence during trial. Onerous condition, like asking the petitioner to preserve the mobile till the disposal of the case, will lead to undue prejudice to the victim of a crime, inasmuch as the same mobile will become defunct and useless by the time the accused faces trial in our legal system. If the prosecution wants to retrieve any data, the mobile can be charged in the Court of the Judicial Magistrate No.I, Kuzhithurai, and whatever data the prosecution wants, they can retrieve it before handing over the same to the petitioner. The petitioner shall execute a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) without sureties to the satisfaction of the learned Judicial Magistrate No.I, Kuzhithurai.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar



To

1. The Judicial Magistrate No.I,
Kuzhithurai.
2. The Sub Inspector of Police,
Kaliyakkavilai Police Station,
Kuzhithurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.H.THAYUMANASWAMY, ADVOCATE IN SR No. 4681

SML

TE/JC/SAR-1 : 05/04/2018 : 3P/5C

Order made in
Crl.R.C.(MD)No.166 of 2018
Dated:-23.03.2018