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Crl.R.C.No.463 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.R.C.No.463 of 2023

P. Pushpa

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
Vigilance and Anti Corruption,
Vellore.

Crime No.7/2020

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to Crl.M.P.No.5336/2021 in Crime No.7/2020 and set aside the order dated 12.08.2022 passed by the Chief Judicial Magistrate, Vellore, Vellore District, consequently, direct to return of the properties seized by the respondent herein in Crime No.7/2020.

For Petitioner : Mr. R.D. Ashok Kumar,
for Mr. K.V. Shanmuganathan

For Respondent : Mr. S. Udaya Kumar,
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is filed by the second accused, seeking return of properties which were seized from her premises, while the Vigilance and Anti Corruption Cell conducted search.



2. The sum and substance of the petition is that the husband of the petitioner is a public servant. Initially a surprise check was conducted at his house in connection with the case in Crime No.7 of 2020. Subsequently, a disproportionate asset case was registered in Crime No.5 of 2021 and consequence to that, the premises of the public servant was searched. Huge currency worth several lakhs, gold ornaments and title documents for valuable properties were seized.

3. The case is under investigation and this petitioner being the spouse of the public servant is suspected to be the abetor to the crime for amazing wealth disproportionate to the known source of income. However, the petitioner herein, claiming that the properties seized from her resident, both movable and immovable, have a lawful source. According to her, she hails from a wealthy family and got substantial Sidhana. Hence, seeks for interim custody of the properties.

4. The trial Court dismissed the petition filed for return of properties under Section 451 of Cr.P.C., observing that if, the interim custody of the property is given to the petitioner, it will affect the investigation in both the cases registered in Crime No.5 of 2021 as well as Crime No.7 of 2020.



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5. Based on the material available, certain opinion also been expressed by the trial Court for rejecting the application. *De-hors* of the said opinion, law on this point is well settled. If the owner claims for a property which is perishable or decayable in nature, the Hon'ble Supreme Court, in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in **(2002) 10 SCC 283** held that interim custody of the property may be given to the owner subject to condition. However, the said dictum may not be applied to the property which is alleged to be the crime proceeds and likely to be confiscated to the state if, the conviction is confirmed.

6. Furthermore, the learned Government Advocate (Crl.Side) states that final notice has been sent to the petitioner and her husband to explain the source of income for possessing the properties which are mentioned in the notice. If, there is any satisfactory explanation given by them for these properties, naturally those properties will be deleted. If case is made out for disproportionate asset, further action will be taken against the petitioner.

7. Learned Government Advocate (Crl.Side) also states that notice seeking explanation was sent to the petitioner on 22.06.2023 and she was



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expected to give her explanation by 07.07.2023, but the petitioner has sought a month's time to give her explanation. Once, the explanation is received, appropriate decision will be taken on the properties seized.

8. This Court records the submission made by the learned Government Advocate and dismiss this petition. Based on the out come of the final report, it is open to the petitioner herein to seek for return of properties, if entitle.

10.07.2023

Index : Yes/No
Neutral Citation : Yes/No
AT

To
1.The Chief Judicial Magistrate, Vellore,
Vellore District.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Vellore.

3.The Public Prosecutor,
High Court of Madras.



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Dr.G.JAYACHANDRAN,J.

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