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Crl.R.C.No.349 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2023

CORAM

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.R.C.No.349 of 2023

Kazhi Alaudeen

... Petitioner

Vs.

1.State rep. by
The Inspector of Police,
No.3, Muthialpet Police Station,
Chennai.
(Crime no.346 of 2022)

2.Mohammed Abdullah

... Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records in Crl MP.No.1035 of 2023 dated 10.02.2023, on the file of the learned XVI Metropolitan Magistrate, George Town, Chennai and to set aside the same.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.V.Meganathan, GA(Crl.side)
for R1



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ORDER

This Criminal Revision Case is filed, praying to call for the records in Crl MP.No.1035 of 2023 dated 10.02.2023, on the file of the learned XVI Metropolitan Magistrate, George Town, Chennai and to set aside the same.

2.The case of the prosecution is that on 13.12.2022 at about 09.30 hours, the 2nd respondent / de-facto Complainant namely Tr. Mohammed Abdullah, S/o.Samu Sahabudden lodged a complaint before the respondent police in which, he has stated that a group of accused persons had entered in the complainant's shop by projecting themselves as NIA officials. The defacto complainant is working as an employee at the mobile phone shop of Kazhi Alaudeen/petitioner at evening bazaar. On 12.12.2022, a sum of Rs.10 lakhs was lying in the shop which is to be utilized for business purpose and the same was kept in a room in No.62, Malayappan Street where, three of the employees namely Syed Mohamed Siddique, Sheik



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Faith, Jamal are staying at the second floor in the said premises. On 13.12.2022 at about 11.30 a.m., when the defacto complainant was at his house, Jamal informed that at about 09.30 a.m., that on the said day, four persons came to their room introducing themselves as NIA officials and under the guise of enquiry they entered the room and taken away the cash in the locker and one CPU, one Laptop and six mobile phones from him. Thereafter, one among the four persons took Siddiq in a two wheeler and went to the shop of the petitioner at evening bazaar and threatened him to open the shop, thereby taken the remaining cash available at the shop and again dropped Siddiq at the house. Hence the complaint. Based on the above, a case was registered in N-3, Muthialpet Police Station in Crime No.346 of 2022, under Section 420 IPC on 13.12.2022 at about 16.00 hours against the accused persons by the respondent police, and the respondent has taken up the case for further investigation. During the course of investigation, on 19.12.2022, the accused persons A-10/Velu, A-11/ Ravi, A-12/Vijaykumar, A-13/Karthick, A-14/Devaraj, A-15/Pushparaj surrendered before the XVI Metropolitan Magistrate Court, George Town,



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Chennai. Thereafter on 21.12.2022, the respondent police took up the above accused into custody and recorded their confession statements and seized the following items under the cover of seizure mahazar:-

A-10 - Cash- 60 Lakhs, 6 cell phone and one CPU

A-11 - Cash - 10 lakhs

A-12 - Cash - 10 lakhs

A-13 - Cash - 7 lakhs, 20 thousand

A-14 - Cash - 15 Lakhs

A-15- Cash - 7 Lakhs, 30 thousand

3. During the course of investigation, on 26 12.2022, the respondent police have arrested the accused/A-9/ Mohammed Basil, A-1/ Sayed Mohammed Siddiq, A2/Ali Jasmin and recorded their confession statements and produced before XVI Metropolitan Magistrate Court, George Town, Chennai and remanded them into judicial custody and seized the following items under the cover of seizure mahazar:-

A-9 - Cash - 5 lakhs 6 thousand and 5 hundred



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A-1 - Cash - 25 Lakhs

A-2- Cash - 25 Lakhs

4.Further, during the course of investigation, on 30.12.2022, the respondent police have arrested the accused A-4 / Kanthavel Raja and recorded his confession statement and seized Cash Rs.3 Lakhs from him under the cover of seizure mahazar and produced before the XVI Metropolitan Magistrate Court, George Town, Chennai and remanded him into Judicial custody.

5.Again during the course of investigation, on 02.01.2023, the respondent police have arrested the accused A-16/ Gopi and recorded his confession statement and Seized Cash Rs.15, 000/- from him under the cover of seizure mahazar and produced him before the XVI Metropolitan Magistrate Court, George Town, Chennai and remanded him into Judicial custody.



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6. Based on the investigation and from the statements obtained from the relevant witnesses, the offences were altered by the respondent on 19.12.2022 from U/s.420 IPC @ U/s. 170, 448, 386, 420 IPC. Once again based on further statements upon investigation and from the confession statement of Velu@ Venkaimaran, Ravi Pushparaj, Vijayakumar, Karthick, Devarai, Kandhavel Raja, Mohammed Baasil, Syed Mohammed Sithick, Ali Jasmeen and Gopi, the respondent police recovered a sum of Rs.1,67,71,500/- from the accused persons on various dates. Thereafter, the offences were again altered on 26.12.2022 under Section 420 IPC @ 170, 448, 386, 420 1PC @ 170, 120(b). 395 /w.149 & 34 IPC. The seized cash is to a tune of Rs.1,67,71,500/-(One Crore Sixty Seven Lakhs and Seventy one Thousand and five Hundred). During investigation, it reveals that the defacto complainant/second respondent has produced the requisite proofs in support of his claim to the above sum of money. Further, the petitioner has also submitted the proof for the income source which affirms that the said amount belongs to him. During the course of pending investigation, the petitioner namely Kazhi Alaudeen, filed a petition U/s.451 Cr.PC for



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return of seized cash before the learned XVI Metropolitan Magistrate Court, George Town Chennai in Cri MP No.1035 of 2023 in which he stated that we have borrowed loan by way of cash from one Loganathan and Balasubramaniam for development of his business and kept the same in his locker in his shop. The said petition was dismissed on 10.02.2023. Thus the respondent Police recovered a total sum of Rs.1,67,71,500/- from the accused persons, and a case has been altered into offences under Sections from 410 IPC to Sections 170, 448, 386, 420 IPC again altered to Sections 170, 120-B, 395 r/w. 149 and 34 IPC.

7.The learned counsel for the petitioner has submitted that the petitioner is engaged in the business of selling mobile phones and mobile phones accessories. He is running a shop in Burma Bazaar in the name and style of M/s.Qeerad Enterprises for the past three years. The defacto complainant namely one Mohamed Abdullah, the second respondent herein is working as a Manager in M/s.Qeerad Enterprises and other persons namely Syed Mohammed Siddick, Sheik Fareed and Jamal are employed in



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the shop. On 13.12.2022, at about 9.30 am, four persons came into the room of the defacto complainant and informed themselves as NIA officials and under the guise of enquiry, they took away money kept in the locker, and also CPC, Laptop and Cell phones and thereafter, they went out of the shop. On suspicion, the defacto complainant namely Mohammed Addullah gave a complaint before the respondent Police. On receiving the complaint, the respondent Police registered a case in Crime no.346 of 2022 against the accused persons, who projected themselves as NIA officials for the alleged offences punishable under Section 420 of IPC.

8.The owner of the shop, the petitioner herein filed a complaint before the XVI Metropolitan Magistrate in CRP No.1035 of 2023, sought to return the money seized by the respondent Police. The trial Court, dismissed the petition on the ground that the petitioner/accused had not shown source for the income of Rs.1,67,71,500/-. Hence, the petitioner challenged impugned order herein.



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9.The learned counsel for the petitioner further submitted that the petitioner is the owner of the money recovered by the respondent Police from the accused persons. A complaint is given by the Manager of the petitioner's Cell Phone shop. The defacto complainant /the second respondent has not claimed ownership over the money. He is represented by the counsel and stated no objection to hand over the money to the petitioner. The money has been kept by the petitioner for the purpose of purchasing the land. In support of his arguments, he filed a loan agreement executed by him. The trial Court, without considering the said fact, dismissed the petition. The petitioner being the owner of the shop and the money has been taken by the accused in the locker from the shop, the petitioner is entitled to get back the money from the Court and thus, pleaded to allow the revision petition.

10.The learned Government Advocate(Crl.side) appearing for the first respondent has submitted that the petitioner is the owner of the money recovered by the Police from the accused persons. The respondent Police



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has not disputed the ownership of the petitioner over the money seized from the accused persons in this case.

11. I have considered the submissions made by the learned counsel on either side.

12. On perusal of the records the fact reveals that the respondent Police registered a case in Crime no.346 of 2022, upon a complaint given by the defacto complainant/Mohammed Abdullah with regard to the robbery committed by the accused persons on 13.12.2022. During investigation, the respondent police, arrested the accused persons and recovered the amount from the accused persons as detailed above. However, the petitioner, in support of his contention, filed a copy of the loan agreement executed by him, to show as to how the money was in his custody. Further, the respondent/police also not disputing the fact that the money has been stolen by the accused persons, which was in petitioner's custody. Under these



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circumstances, the petitioner is entitled to get back the money recovered from the accused. The trial Court dismissed the petition, on the ground that the petitioner failed to show the source of income in respect of the seized amount. For granting interim custody, source of income need not be produced and it is enough to show from whose custody the money has been robbed. Admittedly, from the petitioner's custody, the money has been robbed by the accused persons. On considering the procedure adopted by the Hon'ble Supreme Court in “**Sunderbhai Ambalal Desai Vs. State of Gujarat**” reported in (2002) 10 SCC 283, the reasons stated by the trial Court are not acceptable. Hence, the impugned order is hereby set aside and this Criminal Revision Case is allowed. The petitioner is entitled to get the interim custody of the money seized from the accused.

13.Hence, trial Court is hereby directed to return the money of Rs.1,67,71,500/- to the petitioner on the following conditions:

(i) the Court shall prepare a detailed panchanama of such amount.

(ii)that the petitioner shall execute a bond for a sum of



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Rs.1,67,71,500/- with one surety for the said amount.

(iii)The petitioner should produce the said money, as and when required by the trial Court.

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Index: Yes/No
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To

1.The Inspector of Police,
No.3, Muthialpet Police Station,
Chennai.
(Crime no.346 of 2022)

2.The learned XVI Metropolitan Magistrate,
George Town, Chennai.

3.The Public Prosecutor,
High Court of Madras,Chennai-104.



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**V.SIVAGNANAM, J.,
dn**

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