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Crl.R.C.No.863 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.05.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.863 of 2023

C.Ve.Shanmugam

... Petitioner

Vs.

State rep. by
The Deputy Superintendent of Police,
Anti Trafficking Cell,
CBCID, Chennai
(crime No.2 of 2022)

... Respondent

PRAYER:

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records in Crl.MP.No.4255 of 2023 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai dated 31.03.2023 and to set aside the same and order to return the documents and articles to the petitioner.

For Petitioner : Mr.R.John Sathyan,
Senior Counsel
Mr.M.Mohamed Riyaz

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

For Intervenor : Mr.M.K.Ajith Kumar



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ORDER

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This criminal revision has been filed as against the order passed in Crl.MP.No.4255 of 2023 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai dated 31.03.2023 thereby dismissed the petition filed for return of property.

2. Heard, Mr.R.John, Senior Counsel appearing for the petitioner, Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the respondent and Mr.M.K.Ajith Kumar, the learned counsel appearing for the intervenor.

3. On 11.07.2022 at about 8.30 a.m., the accused persons in the FIR registered in crime No.2 of 2022 along with 300 persons with deadly weapons, wooden logs have proceeded towards AIADMK political party headquarters and ransacked the headquarters. The entire violence was covered by the media. On the said violence, *suo motu* FIR was registered in crime No.190 of 2022 and the same was referred to the Executive Magistrate for enquiry. Thereafter, the headquarters of the political party was sealed by the order passed by the Executive Magistrate. It was challenged before this Court in Crl.OP.Nos.16343 and 16695 of 2022.



The said order was also challenged by one of the accused and this Court by order dated 20.07.2022, set aside the order passed by the Executive Magistrate and directed to hand over the possession of the political party's headquarters office to the then Interim General Secretary of the political party. Accordingly, the seal was removed and handed over the headquarters office to the Manager of the political party's office. While the violence, several documents including original titles in respect of properties owned by the party, original documents, original RC books of 37 vehicles belong to the political party, pass book, computer systems which contain data related to the party and petty cash of Rs.31,000/- were taken away by the accused persons. On verification of video footages, revealed that those documents were taken by the accused persons and as such lodged complaint in respect of robbery committed on 11.07.2022 in the party headquarters. However, the same was not registered and as such, the petitioner was constrained to file writ petition before this Court in WP.No.25011 of 2022.

4. Thereafter, FIR was registered in crime No.231 of 2022 and subsequently, transferred the investigation to the file of CBCID for proper investigation. Thereafter, the respondent re-registered the FIR in



crime No.231 of 2022. During the investigation, all the documents and articles were seized from the accused. Thereafter, the petitioner filed petition for return of properties. While pending the petition, one of the accused filed petition to intervene the petition for return of property. The court below concluded that the said intervenor is one of the accused and he had no locus to object the return of the property since the documents which are sought for return, were seized from the accused persons. That apart, all the documents belong to the political party. However, the intervenor did not challenge the order passed by the court below. While challenging the order passed by the Executive Magistrate, thereby sealed the party's headquarters, this Court set aside the order passed by the Executive Magistrate and directed to hand over the headquarters in favour of the Interim General Secretary of the party. Admittedly, all the documents were taken from the political party's headquarters and belong to political party. On 11.07.2022, documents and articles were in the headquarters and by committing the offence, the accused persons had looted all the documents and articles.

5. After registration of FIR, all the documents and articles were seized from the accused. That apart, this Court directed to hand over the



possession of the headquarters in favour of the General Secretary, who has empowered the petitioner herein to file the petition for return of those documents and articles which were looted by the accused persons. The court below dismissed the application for return of property on the ground that the suits pending between the parties and it does not attain finality. The suits pending between the parties related to convening of General Council Meeting and the resolutions passed there. Admittedly, no suits are pending in respect of documents and articles belong to political party. In fact, the order of handing over the possession of the political party challenged by the rival party before the Hon'ble Supreme Court of India and it was also dismissed by order dated 12.09.2022. Further, those documents and articles are not belong to any private persons. In this regard, the Hon'ble Supreme Court of India has been reiterating the principles and guidelines to be followed by the courts in the matter of entrusting interim custody pending enquiry or trial as follows:

4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer



than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice.

5.

6. It is common ground that these articles belonged to the complainant/ appellant and had been stolen from her house. It is, therefore, clear that the articles were the subject-matter of an offence. This fact therefore, is sufficient to clothe the Magistrate with the power to pass an order for return of the property. Where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property. We do not agree with the view of the High Court that once the articles are not available with the Court,



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Crl.R.C.No.863 of 2023

the Court has no power to do anything in the matter and is utterly helpless.

6. In view of the above, this criminal revision is allowed and the order dated 31.03.2023 passed in Crl.MP.No.4255 of 2023 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai is hereby set aside. Accordingly, the documents and articles mentioned in the petition in Crl.MP.No.4255 of 2023 are ordered to be returned to the petitioner forthwith on the following conditions:

- (i) The petitioner shall produce self attested copy of all the documents.
- (ii) The petitioner shall not alienate any of the subject properties till the completion of trial
- (iii) The petitioner shall produce all the documents and articles before the court whenever required.

04.05.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The learned XI Metropolitan Magistrate,
Saidapet, Chennai
- 2.The Deputy Superintendent of Police,
Anti Trafficking Cell,
CBCID, Chennai
- 3.The Public Prosecutor,
High Court of Madras

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