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Crl.R.C.No.1085/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.06.2023

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THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.1085 OF 2023

Kaliselvam

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Petitioner

The State represented by
Inspector of Police,
R-1, Mambalam Police Station,
Chennai
(Crime No.41 /2023)

...

Respondent

Prayer: Criminal Revision Petition filed under section 397 r/w.401 Cr.P.C.,to set aside the dismissal order passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai in CrI.M.P.No.4866 of 2023, dated 06.04.2023 and further directing the learned XVII Metropolitan Magistrate, Saidapet, Chennai to return the petitioner's OPPO A5 Mobile Phone to the petitioner.

For Petitioner : Mr.H. Yasar Arafath

For Respondent : Mr. R. Vinothraja
GA (Crl.side)



Crl.R.C.No.1085/2023

ORDER

This Criminal Revision case has been filed challenging the order of dismissal dated 06.04.2023 passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.4866 of 2023 filed under section 457 r/w. 451 of Cr.P.C. seeking return of OPPO A5 Mobile Phone to the petitioner.

2. The learned counsel for the petitioner contended that the petitioner is the owner of OPPO A5 Mobile Phone seized by the respondent police on the allegation that the petitioner indulged his cell phone for selling other state lottery tickets banned by our State, through On-line. A case was registered by the respondent for the offence under section 7(3) of Lottery Regulation Act, 1998 against the accused on 21.02.2023 in Cr.No.41/2023. Pursuant to which, the OPPO A5 Mobile Phone was produced before the court below in B.No.363 of 2023. Seeking return of the abovesaid mobile phone, the petitioner has filed a petition before the court below in Crl.M.P.No.4866/2023 in Crime No.41 /2023, but the court below dismissed the petition on the ground that the mobile phone was used by the petitioner for carrying on his lottery business through On-line and the property used in the commission of offence is liable to be



confiscated, hence interim custody of the same cannot be handed over to the petitioner. He further submitted that the seized mobile phone was used only for his personal use and the mobile was not involved in any previous offence and he is ready to hand over the property whenever required by the trial court. In such circumstances, he seeks to grant interim custody of the mobile phone to the petitioner.

3. Further, the learned counsel for the petitioner submitted that no purpose will be served in keeping the mobile-phone under the custody of respondent police and if the mobile-phone is kept for a long time, it would become unusable and the same will diminish the value of the mobile phone. The petitioner is ready to give appropriate guarantee as well as security for return of mobile phone and also he will produce the mobile phone as and when required either before the respondent police or before the trial court. Hence, he prayed to return the mobile phone and he is ready to obey any condition imposed on him by this Court.

4. The learned Government Advocate (crl.side) for the respondent objected to return the mobile phone to the petitioner and submitted that the



petitioner is arrayed as accused in this case and investigation is still pending and if the phone is returned, it will affect further investigation. However, he would fairly concede that there is no previous case registered against this petitioner involving similar type of offence.

5. I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (crl.side) for the respondent.

6. Perusal of records would reveal that on 21.02.2023, on receiving secret information, the respondent police team conducted police patrolling and while they were coming near Pandiyan Stores at Ranganathan Street, T.Nagar, the petitioner, on seeing the police, attempted to escape from the spot. The respondent police caught the petitioner/accused red-handed and on enquiry, it came to know that the petitioner indulged in selling Kerala and Bhutan lottery tickets, which was banned by our State Government, by sending the numbers of the lottery tickets to his customers through Whatsapp. Pursuant to which, he was arrested and his cell phone viz., OPPO A5S and an amount of Rs.3080/- being the sale amount of lottery tickets, were seized from him. A case was registered



against the petitioner in Cr.No.41 of 2023 for the offence under section 7(3) of Lotteries Regulation Act, 1998. The petitioner is the owner of the above said OPPO A5S cell phone and he is arrayed as accused in Crime No.41 of 2023 and the investigation is still pending.

7. Perusal of records would further reveal that the petitioner is the owner of OPPO A5S cell phone and he is ready to give guarantee and security for returning the cell phone. If the phone is not regularly used, the phone will be damaged and the value of the same gets deteriorated. It is further seen that the petitioner is not involved in any previous case involving similar type of offence.

8. Further, the Honourable Supreme Court in the case of ***Sunderbhai Ambalal Desai and others Vs.State of Gujarat in Special Leave Petition (crl.) 2745 of 2022 dated 01.10.2002*** has held that in order to protect the property, the Apex Court has directed to handover the seized articles to the owner on proper Panchnama.

9. Considering the above aspects and also the ratio laid down by the Hon'ble Apex Court, this Court is of the view that keeping the cell phone idle,



will diminish its nature and lose its value and no purpose will be served. As such, considering the nature of offence and also taking into account the fact that the petitioner is not involved in any other case similar in nature previously, this Court is inclined to allow the Criminal Revision Case.

10. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 06.04.2023 passed in Crl.M.P.No.4866 of 2023 by the XVII Metropolitan Magistrate, Saidapet, Chennai is set aside. The cell phone viz., OPPO A5S belonging to the petitioner is ordered to be returned to him on the following conditions.

- i. the petitioner shall prove his ownership of the cell phone by producing relevant records
- ii. the petitioner shall execute a personal bond for a sum of Rs.5,000/- (Rupees five thousand only) before the XVII Metropolitan Magistrate, Saidapet, Chennai and the above said court shall not insist the petitioner for production of solvency certificate;
- iii. The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle and such panchanama can be used in



Crl.R.C.No.1085/2023

evidence.

iv. the petitioner may take photograph of the cell phone certified under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence.

v. the petitioner shall not alienate or encumber the cell-phone in any manner;

vi. the petitioner shall give an undertaking that he will not use the cell-phone for any illegal activities in future;

vii. the petitioner shall also produce the cell-phone as and when required before the court below and before the respondent police.

23.06.2023

msr

Index: yes/no

Internet:yes/no

To

1. The XVII Metropolitan Magistrate,
Saidapet, Chennai.
2. The Inspector of Police,
R-1, Mambalam Police Station,
Chennai
3. The Public Prosecutor,
Madras High Court.



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Crl.R.C.No.1085/2023

V. SIVAGNANAM, J.

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CRL.R.C.NO.1085 OF 2023

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