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Crl.R.C.No.1003 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.RC.No.1003 of 2023

Kaliselvam
Petitioner

...

Vs.

State : Inspector of Police,
R.1 Mambalam Police Station,
Chennai.
Crime No.62 of 2023
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the dismissal Order passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.5612 of 2023 dated 06.04.2023.

For Petitioner

: Mr.H.Yasar Arafath



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For Respondent : Mr.R.Vinothraja
Government Advocate (Crl.Side)

ORDER

Challenging the Order passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.5612 of 2023 dated 06.04.2023 and to return the ViVo T IX Space Blue Color Mobile Phone, the present revision has been filed.

2. It is the case of the prosecution that on 18.03.2023, when the respondent police were on patrol duty they found petitioner in possession of banned lottery tickets the respondent police seized ViVo T IX Space Blue Color Mobile Phone from the petitioner and a case in Crime No.62 of 2023 was registered for the offence under Section 7 [3] of Lottery Regulation Act 1998.

3. The respondent police seized the ViVo T IX Space Blue Color Mobile Phone of the petitioner. The petitioner filed a petition in



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C.M.P.No.5612 of 2023 before the Trial Court to return ViVo T IX Space Blue Color Mobile Phone to the petitioner. But it was dismissed, vide order dated 16.04.2023 stating that since the mobile phone was involved in commission of the offence, the property is liable to be confiscated and interim custody of the mobile phone cannot be granted. Hence, challenging the above said order, the petitioner filed the present Revision case.

4. The learned counsel for the petitioner submitted that the petitioner is the owner of the ViVo T IX Space Blue Color Mobile Phone. He further submitted that if the mobile is kept unused for a long time, it cannot be used and its value will be diminished and the petitioner is ready to give appropriate guarantee as well as security for return of ViVo T IX Space Blue Color Mobile Phone and also he will produce the ViVo T IX Space Blue Color Mobile Phone, as and when required either before the respondent police or before the Trial Court. Hence, he prayed to return the vehicle to the petitioner.



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5. The learned Government Advocate [Criminal Side] appearing for the respondent submitted that the petitioner is owner of the ViVo T IX Space Blue Color Mobile Phone and since the above said I Phone was used by the accused while selling banned lotteries, he objected to return the ViVo T IX Space Blue Color Mobile Phone to the petitioner.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate [Criminal Side] appearing for the respondent and I have perused the materials on record.

7. A perusal of the records shows that, the respondent police registered a case in Crime No.62 of 2023 for the offence under Section 7 [3] of Lottery Regulation Act 1998 with regard to sale of banned lotteries . Further, it reveals from the records that the petitioner is the owner of the ViVo T IX Space Blue Color Mobile Phone and it was seized by the respondent police. The Trial Court dismissed the petition in



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C.M.P.No.5612 of 2023, filed by the petitioner, on the ground that the petitioner has not mentioned in his petition as to how the phone has gone to the hands of the accused and on the objections raised by the prosecution. It is the contention of the learned counsel for the petitioner that the petitioner is ready to give guarantee and security for returning the ViVo T IX Space Blue Color Mobile Phone and if the ViVo T IX Space Blue Color Mobile Phone is being kept unused, it would cause damage to the iPhone.

8. At this juncture, it is relevant to rely upon a decision of the ***Hon'ble Supreme Court in Sunderbhai Ambalal Desai and others Vs. State of Gujarat in Special Lave Petition (Crl.)2745 of 2022 dated 01.10.2002*** wherein the Hon'ble Supreme Court 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 as per the ratio laid down by the Hon'ble Apex Court, this Court is of the view that, keeping the ViVo



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T IX Space Blue Color Mobile Phone idle, will diminish its nature and lose its value and no purpose will be served. As such, considering the nature of offence, this Court is inclined to allow the Revision Petition.

10. Accordingly, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The respondent police is directed to return the ViVo T IX Space Blue Color Mobile Phone to the owner on the following conditions :

- i. the petitioner shall prove his ownership of the ViVo T IX Space Blue Color Mobile Phone by producing relevant records;
- ii. the petitioner shall execute a personal bond for a sum of Rs.13,000/- (Rupees thirteen thousand only) before the learned XVII Metropolitan Magistrate, Saidapet, Chennai and the learned Judge shall not insist on production of solvency certificate.
- iii. the Court may prepare a panchnama in Judicial Form No.82 with regard to the ViVo T IX Space Blue Color Mobile Phone and such



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panchanama can be used in evidence.

- iv. the petitioner shall take photograph of the ViVo T IX Space Blue Color Mobile Phone and 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 ViVo T IX Space Blue Color Mobile Phone in any manner;
- vi. the petitioner shall give an undertaking that he will not use the ViVo T IX Space Blue Color Mobile Phone for any illegal activities in future,
- vii. the petitioner shall also produce the ViVo T IX Space Blue Color Mobile Phone as and when required before the court below and before the respondent police.

15.06.2023

Index: Yes/No
Internet: Yes/No

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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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V.SIVAGNANAM, J.,

VTC

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