



Crl.R.C.No.1176 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1176 of 2023

Sakunthala

... Petitioner

Vs.

State Rep. by
Inspector of Police,
R-5, Virugambakkam Police Station,
Chennai.
(Crime No.632 of 2022)

... Respondent

Prayer : Criminal Revision filed under Section 397 & 407 of Criminal Procedure Code to set aside the orders dated 09.02.2023 in Crl.M.P.No.1967 of 2023 on the file of the XXIII Metropolitan Magistrate Court, Saidapet.

For Petitioner : Mr.R.Thamarai Selvan

For Respondent : Mr.R.Vinothraja, GA (Crl. Side)

ORDER

Challenge in this criminal revision case is made to the orders dated 09.02.2023 in Crl.M.P.No.1967/2023 passed by the learned XXIII Metropolitan Magistrate, Saidapet.

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2. The revision petitioner is the defacto complainant in Crime No.632/2022 of R-5, Virugambakkam Police Station, Chennai. Her complaint is that on 21.09.2022 at about 06.30 A.M. when she was proceeding towards Balalok School near Virugambakkam from her home, the accused, who was riding a motorcycle, snatched her gold chain weighing 3 sovereigns and fled away from the scene of occurrence. She immediately lodged a complaint with the Sub Inspector of Police, R5, Virugambakkam Police Station, Chennai. The Sub Inspector of Police took up the investigation and registered an FIR in Crime No.632/2022 against an unknown person for the offence punishable under section 379 IPC. During the course of investigation, the accused was arrested and based on his confession statement, a gold chain weighing 12.500 gms was seized from him under the cover of a seizure mahazar and was produced before the concerned Magistrate under Form 95 on 06.10.2022. Thereafter, the defacto complainant filed a petition under Section 451 Cr.P.C. seeking for interim custody of gold chain weighing 12.500 gms. Learned XXIII Metropolitan Magistrate, Saidapet vide orders dated



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09.02.2022 dismissed the said petition on the following grounds :

- i. The accused was in possession of the jewel and at present he should be construed as owner of the jewel. Without hearing the accused the jewel cannot be returned to the present revision petitioner.
- ii. The present revision petitioner had already filed a similar petition in Crl.M.P.No.17569/2022 and the same was dismissed on 09.11.2022.
- iii. The police and the defacto complainant colluded with each other by presenting a wrong Form 95 before the Court.

Aggrieved over the said orders, the present revision is filed.

3. Mr.R.Thamarai Selvan, learned counsel for the revision petitioner contended that though the defacto complainant had identified the jewel as hers, the trial court did not consider the same and wanted to hear the accused before passing an order under Section 451 Cr.P.C. He would further contend that the recovery of stolen articles by the police from the accused during the course of investigation cannot be said to be



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the articles belonging to the accused and that the orders passed by the Magistrate is liable to be set aside.

4. Mr.R.Vinothraja, learned Government Advocate (Crl. Side) would contend that at the time of arresting the accused he was found to be involved in four other crimes of similar nature and that seizure mahazar with regard to some other crime number was filed before the XXIII Metropolitan Magistrate Court, Saidapet. However, Form 95 was rightly presented and according to him, the defacto complainant is the owner of the gold chain weighing 12.500 gms.

5. When there is no ambiguity in Form 95 and the fact that there are four cases against the present accused the mistake committed by the police in filing seizure mahazar pertaining to some other crime numbers in the present case cannot be a ground for the Magistrate to make an unwarranted observation that the police and the defacto complainant had colluded with each other.



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6. It is seen from the records that the police, during the course of investigation, had seized the gold jewel from the accused and it cannot be said that the accused is the owner of the jewel. While hearing the petition under Section 451 Cr.P.C. learned Magistrate need not hear the accused, especially, when the defacto complainant had identified the jewel.

7. In the circumstances, the present Criminal Revision is allowed and the gold jewel weighing 12.500 gms is returned to the revision petitioner on the following conditions :

- i. The petitioner shall prove the ownership of the gold chain before the trial court.
- ii. The petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) before the learned XXIII Metropolitan Magistrate, Saidapet.
- iii. The Court shall take photograph of the jewel before returning the same to the petitioner.



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- iv. The petitioner shall not alienate the jewel in any manner whatsoever;
- v. The petitioner shall also produce the jewel as and when required by the court below.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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R. HEMALATHA, J.
mtl

To

1.The Inspector of Police,
R-5, Virugambakkam Police Station,
Chennai.

2.The XXIII Metropolitan Magistrate Court, Saidapet.

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