



WEB COPY



Crl.R.C.No.1245 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM

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

Crl.R.C.No.1245 of 2023

Mohammed Ilyas

... Petitioner

Vs.

The State Rep. by
Inspector,
Railway Protection Force,
Villivakkam.

... Respondent

Prayer : Criminal Revision filed under Section 397 & 401 of Criminal Procedure Code 1973, to set aside the order passed in CMP No.19 of 2023, dated 20.03.2023 by the learned Special Metropolitan Magistrate Court for Railways, Chennai.

For Petitioner : Mr.Y.Solomon

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

ORDER

The present criminal revision petition is filed challenging the orders dated 20.03.2023 in C.M.P.No.19 of 2023 passed by the Special Railway Metropolitan Magistrate, Chennai Central, Chennai - 03.



Crl.R.C.No.1245 of 2023

WEB COPY

2. The petition in C.M.P.No.19 of 2023 was filed by the present petitioner under Sections 451 / 457 of Cr.P.C., praying to return one assembled Red & Black colour Zebronics CPU and one Black Apple iPhone SE with Apple Symbol.

3. The case of the prosecution is that the present petitioner / accused was unauthorisedly carrying on the business of procuring and selling of Railway journey cum IRCTC e-tickets to his customers without obtaining license from the Railway authorities, by creating multiple user IDs for his monitory benefits and thus he committd an offence punishable under Section 143(1)(a) of the Railways Act, 1989, and an FIR was registered in Crime No.614/2022 of RPF, Villivakkam, Chennai. After completion of investigation, a final report in C.R.C.No.7365 of 2022 was filed against the present petitioner/accused by the Railway Protection Force. The learned trial Judge viz., Special Railway Metropolitan Magistrate, Chennai Central, convicted the accused for the offence punishable under Section 14 (1) (a) of the Railways Act, 1989 and



CrI.R.C.No.1245 of 2023

directed him to pay a sum or Rs7,000/- in default to undergo Simple Imprisonment for a period of one month. Thereafter, the petitioner/accused filed C.M.P.No.19 of 2023 before the trial Court, under Sections 451 / 457 of Cr.P.C., praying to return the articles seized from him namely assembled Red & Black colour Zebronics CPU and one Black Apple iPhone SE with Apple Symbol and the same was dismissed on 20.03.2023, against which, the present revision is filed.

4. A perusal of the records shows that while disposing C.R.C.No.7365 of 2022 on 18.02.2023, the Special Metropolitan Magistrate, Chennai Central had directed for confiscation of all the above said articles. Subsequently in the petition in in C.M.P.No.19 of 2023 which was filed seeking return of the property, the learned trial Court Judge passed the following order:

“5. Records perused carefully. The properties which the petitioner requires in Cr.No.614/2022 are,

- i. One assembled Red & Black Colour Zebronics CPU;*
- ii. One Black Apple iPhone SE mobile with Airtel 4G Sim*



WEB COPY



Ctrl.R.C.No.1245 of 2023

*Card No.8991400912998903400U, Mobile No.99529
69048, EMI No.1.356494109736624, 2.
356494109276902.*

*The tickets which were seized in the Crime
No.614/2022. The prosecution has stated that, the petitioner
has used the above properties for the commission of offence u/s
143 of Railways Act, 1989 and the seized items said to have
contains the personal ID of the accused, passengers name,
details of the ticket, money transaction made to book the tickets
etc., in electronic form. Hence, this Court holds that, without
any conclusive proof and basing upon bald arguments of the
petitioner, the return of One assembled Red & Black Colour
Zebronics CPU & One Black Apple iPhone SE mobile with
Airtel 4G Sim Card No.8991400912998903400U, Mobile
No.99529 69048, EMI No.1. 356494109736624, 2.
356494109276902 will lead to manipulation of details and
tampering of prosecution and evidence. Further, this Court
holds that, the commission of an offence U/s.143(1)(a) of*



Railway Act by the petitioner/accused can be decided only through the course of trial. Section 143(1)(b) of Railway Act also says that, purchase or sells or attempts to purchase or sell tickets with a view to carrying on any such business either by himself or by any other person, he shall be punishable with imprisonment for term which may extend to three years or with fine which may extend to ten thousand rupees, or with both also forfeit the ticket which he so procures, supplies, purchases, sells or attempts to purchase or sell. So the things which are used to procure supplies, purchases, sells or attempts to purchase or sell should be confiscated by the Act itself. Therefore, this Court holds that, as the offence has involved with electronic evidence one assembled Red & Black Colour Zebronics CPU & One Black Apple iPhone SE mobile with Airtel 4G Sim Card No.8991400912998903400U, Mobile No.99529 69048, EMI No.1. 356494109736624, 2. 356494109276902 cannot be handed over to the petitioner for interim custody at this juncture.”



Crl.R.C.No.1245 of 2023

WEB COPY

5. Thus, the very same Judge who passed the Judgment in C.R.C.No.7365 of 2022, had dismissed the application in CMP No.19 2023 on the ground that the commission of offence by the accused under Section 143 (1)(a) of the Railways Act, 1989 could be decided only during the course of trial. Though the said observation may not be correct, a perusal of the records shows that the orders have already been passed on 18.02.2023 for disposal of the property. However, the present revision petitioner had not challenged the said order passed by the trial Court in C.R.C.No.7365 of 2022 and therefore, the present Criminal revision is dismissed.

01.08.2023

Index: Yes/No
Speaking/Non-Speaking order
vum



CrI.R.C.No.1245 of 2023

WEB COPY To

1. Inspector,
Railway Protection Force,
Villivakkam.
2. The Special Metropolitan Magistrate
Court for Railways, Chennai.
3. The Section Officer,
Criminal Section,
High Court, Madras.



WEB COPY



Crl.R.C.No.1245 of 2023

R. HEMALATHA, J.

vum

Crl.R.C.No.1245 of 2023

01.08.2023