



Crl.O.P.No.16422 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

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Prabhakaran

.. Petitioner

Versus

The State: Represented by,
The Inspector of Police,
M-5, Ennore Police Station,
Chennai - 600 019.
Crime No.717 of 2022

.. Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records in C.M.P.SR.No.335 of 2023, dated 08.02.2023 on the file of the learned Judicial Magistrate at Thiruvottiyur and to set aside the same and order to return the property to the petitioner.

For Petitioner : Mr.C.Raghavan

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

ORDER

This petition has been filed aggrieved by the docket order passed by the Court below returning the application filed by the petitioner seeking for



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the return of a sum of Rs.17,19,000/- which was recovered by the respondent Police in the course of investigation.

2. The petitioner is the de-facto complainant and he gave a complaint to the respondent Police to the effect that the employees who were working on a contract basis in a petrol bunk had misappropriated money to the tune of Rs.23,00,000/-. Based on this complaint, the respondent Police registered an F.I.R in Crime No.617 of 2022 as against ten named accused persons and others. The further case of the petitioner is that in the course of investigation, the respondent Police had recovered a sum of Rs.17,19,000/-. The petitioner filed an application under Sections 451 and 457 of Cr.P.C., seeking for the return of the money. This application was not entertained by the Court below on the ground that the money was not recovered under a seizure mahazar by the respondent Police. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.C.Raghavan, learned Counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for the respondent.



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4. The learned Additional Public Prosecutor submitted that Section 41A of Cr.P.C., notice was issued to all the accused persons and they attended the enquiry and their statements were recorded. At the time of enquiry, some of the accused persons also handed over the money that was misappropriated and the total amount that was handed over is to the tune of Rs.17,19,000/-. When this amount was sought to be deposited before the Court below, the Court below refused to receive the same on the ground that these amounts were not recovered under the seizure mahazar.

5. In the considered view of this Court, the statements that have been recorded from the accused persons will contain the amount that has been recovered from them at the time of enquiring them by issuing notice under Section 41A of Cr.P.C. This document is sufficient for the Court below to receive the amount that has been collected from the accused persons. It was also brought to the notice of this Court that apart from the amount, nine mobile phones were also seized from the accused persons. A seizure mahazar only substantiates the fact that the property was seized from the accused persons. Such seizure can take place after an arrest of the accused person or after conducting a search in a place or the accused persons



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themselves handing over the same when they are called for an enquiry under Section 41A of Cr.P.C. Ultimately, the Court must be satisfied that it was recovered from the accused persons and basis for the same can be relatable even to a statement that is recorded from the accused persons after they are summoned under Section 41A of Cr.P.C.

6. In the light of the above discussion, there shall be a direction to the learned Judicial Magistrate, Thiruvottiyur to accept the deposit of the sum of Rs.17,19,000/- by the respondent Police and also the nine mobile phones that were seized from the accused persons at the time of enquiry. Thereafter, the Court below shall entertain the application filed by the petitioner / de-facto complainant and pass appropriate orders in accordance with law. The respondent Police shall deposit the money and the mobile phones within a period of one week from today.

7. This Criminal Original Petition is disposed off with the above directions. The Registry is directed to hand over the original application that has been filed by the learned Counsel for the petitioner in order to



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enable the petitioner to represent the same before the concerned Court
seeking for the return of the sum of Rs.17,19,000/-.

24.07.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs
Issue order copy on 26.07.2023.
To

1. The Judicial Magistrate,
Thiruvottiyur.
2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
M-5, Ennore Police Station,
Chennai - 600 019.



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N.ANAND VENKATESH, J.
grs

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