



Crl.R.C.(MD).No.713 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.07.2023

Pronounced on : 19.10.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.713 of 2023

Sayed Raghib Khursheed

... Petitioner/Petitioner/
Accused No.3

Vs.

State rep by
The Inspector of Police,
Cyber Crime Police,
Sivagangai District.
Crime No.10 of 2023

... Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 & 401 of Cr.P.C., to call for the records pertaining to the order dated 20.06.2023 passed by the learned Judicial Magistrate No.II, Sivagangai, in Cr.M.P.No.7033 of 2023 in C.C.No.277 of 2023 and set aside the same.

For Petitioner : Mr.B.Sargunam

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.Side)



Crl.R.C.(MD).No.713 of 2023

ORDER

WEB COPY

This petition has been filed to set aside the order passed by the learned Judicial Magistrate No.II, Sivagangai, in Cr.M.P.No.7033 of 2023 in C.C.No.277 of 2023 dated 20.06.2023.

2.The petitioner, who is the third accused in Crime No.10 of 2023 filed a petition in Crl.MP.No.7033 of 2023 before the learned Judicial Magistrate No.II, Sivagangai, under Section 451 Cr.P.C seeking interim custody of the HP Laptop (Serial No.CND4236P85), Dell Laptop (InspironN4010)-2, Android Mobile Phone 3 (Vivo Y01 IMEI No.864499059542232, 864499059542224 (with Sim-971806852003), Apple iPhone 12 mini, Nokia Keypad used 5, Nokia Keypad, Lenovo New Tab-1 (IMEI No.353017119643051, 353017110592810 and the same was dismissed by the impugned order dated 26.06.2023.

3.The specific case of the prosecution is that the petitioner is the main accused in this case. This petitioner alone created the forgery link by using the above material objects and sent sms to the various cell phone numbers and facilitated the remaining accused to illegally loot the money from the various innocent bank account holders.



Crl.R.C.(MD).No.713 of 2023

WEB COPY

3.1. On receipt of complaint, the respondent police registered a case in Crime No.10 of 2023 for the alleged offences under Sections 420, 120(b), 468, 471 of IPC and 66 (D) of Information Technology (Amended Act), 2008 and Sections 20, 21 and 25 of Telegraph Act against the petitioner and the other accused alleging that they entered conspiracy and illegally taken the money of the defacto complainant from his account by committing the cyber crime and arrested the petitioner and recovered the above articles.

3.2. After completion of investigation, the respondent police filed a final report before the learned Judicial Magistrate No.II, Sivagangai, and the same was taken on cognizance in C.C.No.277 of 2023. Pending the trial, the petitioner filed Crl.MP.No.7033 of 2023 seeking interim custody of the said material objects in order to continue his business.

3.3. The said application was contested by the respondent police stating that the petitioner used these materials in the earlier offences committed by him all over India. As on date, more than 268 victims were affected by the act of the accused and in the said process, more than Rs.82 lakhs was swindled by the



Crl.R.C.(MD).No.713 of 2023

petitioner and the other accused which was revealed in the course of investigation.

3.4. Since the final report taken on file by the learned trial Judge and the petitioner is likely to commit the said offence by using this electronic devices, the prosecution raised strong objection to give the interim custody of materials.

3.5.Considering the said submission, the learned trial Judge dismissed the petition in Crl.MP.No.7033 of 2023 by passing the impugned order dated 26.06.2023.

4. Challenging the same, the petitioner filed this Revision and made the following submissions:-

(i) In the entire final report, it is alleged that the petitioner and the other accused only swindled the amount of Rs.99,887/-. In the said circumstances, the allegation of the Investigation Agency that the petitioner and the other accused cheated Rs.82 lakhs is without material. Therefore, the objection of the prosecution is not legally corrected.



Crl.R.C.(MD).No.713 of 2023

(ii) He placed reliance of the judgment of the Hon'ble Supreme Court reported in **Sunderbai Ambalal Desai V. The State of Gujarat and General Insurance Council V. State of AP.** In view of the above law laid down by the Hon'ble Supreme Court, he entitled to interim custody of the material objects in order to promote his business. So, the learned counsel for the petitioner seeks interim custody of the material objects.

5. Per contra, the learned Government Advocate (Crl.Side) filed the detailed counter and stated that in the recovered materials, around 256 files containing above 10,000 to 20,000 mobile numbers and the petitioner used these mobile numbers and shared the same to other professional hackers/cyber criminals. Further, from the files, it is revealed that more than 268 victims all over India have been affected by the act of the petitioner and the other accused. In that process, on approximate Rs.82 lakhs has been embezzled and he seeks dismissal of the petition.

6.This Court considered the rival submission and perused the records and the precedents relied by both the counsel.



Crl.R.C.(MD).No.713 of 2023

WEB COPY

7.As per the allegation of the prosecution, the petitioner and the other accused conspired together and swindled the amount of the various innocent account holders by committing the offence of cyber crime. The said mischief was found out by the Investigation Agency and the petitioner was arrested and material objects were recovered. Even though arrest was made relying the complaint of the defacto complainant, the accused committed this *modus operandi* through the material objects and sent more than 10 crore fraudulent SMS to the general public under the various heads including EB disconnection, KYC update, Tower Installation Message, PM Yojana loan scheme and several others. The said message was sent with an intention to trick the victims and make them loose money innocently.

8. A detailed counter was filed by the investigation agency is as follows:-

“3.I humbly submit that I have filed a Copy Application and verified clearly that there is only one De-facto complainant in the present case in CC.No.277 of 2012 on the file of learned Judicial Magistrate No.II of Sivagangai, and his name is Muthukaruppan belongs to Karaikudi. The Respondent Police purposefully suppressed the above facts before the Court to dismiss this case in his favour, which is amount to misleading the Honourable Court.



Crl.R.C.(MD).No.713 of 2023

4.I humbly submit that the Honourable Court kindly has to consider to my following lawful submissions as mentioned below:-

a) In the impugned order in Cr.M.P.No.7033 of 2023 Dated 26.06.2023, the trial Court mentioned in the Judgment that “ Via SIM No.917011897736 the accused sent a link to the De-facto complainant and embezzled Rs.99,876/- but I have had no property as such, I seek to release different SIM No.971806852003 along with other properties which were not at all relevant for this offense, but the lower court failed to ensure cause of crime SIM number and mechanically dismissed my application.

b) There is only one De-facto Complainant in the C.C.No.277 of 2023 on the file of the learned Judicial Magistrate No.II of Sivagangai, not 268 De-facto Complainants as mentioned in the counter affidavit filed by the Respondent c) The return of the properties are electronic products if it is not used frequently which destroys the battery and other micro particulars.

d) For the past five months, the Respondent has already extracted the details in the electronic gadgets and they found nothing relevant to any crime, which is also clearly visible in the Charge Sheet No.277 of 2023. Thereof, if electronic gadgets are stored in one place for a long time they would not sustain for any purpose e.g. Investigation, forensic analysis, etc., Hence, it is deserved to be released at this stage.

5.I humbly submit that in a recent judgment, in Manjit



Crl.R.C.(MD).No.713 of 2023

WEB COPY

Sngn Vs. State in Crl.M.C.4485 of 2013 and Cr.M.A.16055 of 2013, dated 10.09.2014, the Honourable High Court of Delhi stated as follows for Disposal of Case Property; “if the property is subject to speedy and natural decay or if it is otherwise expedient to do so, the court may after recording evidence as ti thinks necessary to order it to be sold or otherwise disposed of.”

6.I humbly submit that in that regard, the observations of the Hon'ble Supreme Court in Sunderbhai Ambalal Desai Vs. State of Gujarat are very much relevant which read thus;

a) Owner of the article would not suffer because of its remaining unused or its misappropriation,

b) The court or the police would not be required to keep the article in safe custody,

c) If the proper Panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail, and

d) This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be a further chance of tampering with the articles.

7.There is only one complaint against me in Crime No.10 of 2023 on the file of Respondent, simultaneously I have no other case registered against me in the entire country. Moreover, the Respondent police themselves framed the non-



Crl.R.C.(MD).No.713 of 2023

WEB COPY

judicial confession statement against me and played it as trump card. It is well-settled law that the outside judicial confession is a weak piece of evidence.”

9. In view of the apprehension of the investigation agency in the detailed counter filed before this Court, this Court is not inclined to accept the submission of the learned counsel for the petitioner to give the interim custody of the material objects and the apprehension expressed by the Investigation Agency that the petitioner might involve in the further such illegal activities using these material objects is well founded and hence, this Court does not find any merits in the Revision.

10. Accordingly, the impugned order passed by the learned Judicial Magistrate No.II, Sivagangai, in Cr.M.P.No.7033 of 2023 in C.C.No.277 of 2023, dated 20.06.2023, is hereby confirmed and the Criminal Revision Case is dismissed.

19.10.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss



WEB COPY



Crl.R.C.(MD).No.713 of 2023

K.K.RAMAKRISHNAN, J.

dss

To

- 1.The Judicial Magistrate No.II,
Sivagangai.
- 2.The Inspector of Police,
Cyber Crime Police,
Sivagangai District.
- 3.The Section Officer,
Records Section,
Madurai Bench of Madras High Court, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.RC(MD)No.713 of 2023

19.10.2023