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Crl.R.C(MD)No.296 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.01.2025

Pronounced on : 31.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.296 of 2024

S.G.Surya

... Petitioner

Vs.

State through
The Inspector of Police,
CCD-III,
Madurai City.
(In Crime No.24 of 2023)

... Respondent

PRAAYER : This Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C. to call for the records and set aside the order passed in Crl.M.P.No.4211 of 2023, dated 01.02.2024 passed by the Judicial Magistrate No.I, Madurai and grant interim custody of electronic equipments to the petitioner.

For Petitioner : Mr.Anantha Padmanaban
Senior Counsel
for M/s.APN Law Associates

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



ORDER

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This Criminal Revision Case is directed against the order, dated 01.02.2024 passed in Crl.M.P.No.4211 of 2024 on the file of the learned Judicial Magistrate No.1, Madurai and to grant interim custody of electronic equipments seized in this case to the petitioner.

2.The brief facts of the case:

The revision petitioner is a senior member of Bharathiya Janata Party and he is functioning as its secretary of Tamil Nadu in respect of the Information and Technology Wing. It is alleged that the revision petitioner posted an offensive tweet message through electronic media on 10.06.2023 mentioning that a councilor of the Marxist Communist party of Pennadam Town Panchayat asked a sanitary worker, belonging to the scheduled community, to clean the gutter in his ward which resulted the death of the sanitary worker by inhaling poisonous gas that emanated from that gutter, but the Member of Parliament Thiru Su.Venkatesan, Madurai kept a deceptive silence. Hence, the defacto complainant, who is the secretary of Marxist Communist Party lodged a complaint against the revision petitioner that the aforesaid message of the revision petitioner lead to the instigation of the caste and communal clash



between two sections of society and to breach the public order. On the basis of the said complaint, the respondent police has registered a case in Crime No.24 of 2023 U/s.153A, 504, 505(1)(b), 505(1)(c) of IPC and U/s.66(D) of IT Act 2008. During investigation, the petitioner was arrested and the petitioner's electronic equipments such as one Apple Laptop Model A2338, one Apple i.Pad Model A2378, two counts of Apple Mobile Phone and one count of Samsung Mobile phone were seized. Later, the revision petitioner came out on obtaining bail. Thereafter, the revision petitioner filed the petition in Crl.M.P.No.4211 of 2023 before the Judicial Magistrate Court No.1, Madurai, for interim custody of the seized electronic equipments, but that petition was dismissed by the trial Court on 01.02.2024.

3. Aggrieved by that order, the petitioner has come forward with this present Criminal Revision Case.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent.



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5. The learned counsel appearing for the revision petitioner has submitted that the petitioner is the owner of the seized electronic equipments, which were remanded in RPR.No.90/2023 before the trial Court. There is no false information or false rumor or any unparliamentary word that was used for the message. The said gadgets were sent to Centre for Development of Advanced Computing (CDAC), Thiruvananthapuram, Kerala, for analysis report and after examination, analysis report was received by the trial Court, wherein it is clearly stated that all the chats, email communications, list of installed applications etc. from the seized electronic equipments were extracted and stored in a separate Pen Drive and pen drive was sent along with the report to the trial Court. The electronic gadgets are having high value and they are kept idle in the Court custody. While being the facts so, the trial Court has declined to grant interim custody of the seized properties to the petitioner.

6. The learned counsel for the petitioner further submitted that the Hon'ble Apex Court in **Sunderbhai Ambalal** case clearly held that “the object and scheme of the various provisions of the Code appear to be that where the property which has been the subject matter of an offence is seized by the police, it ought not to be retained in the custody



of the Court or of the police for any time longer than what is absolutely necessary.” The petitioner has given necessary undertaking in his affidavit and he is also ready to submit the bond as directed by the Court. But, the trial Court has not considered all these aspects, simply dismissed the petition. Therefore, this Criminal Revision Case may be allowed and all the seized electronic devices including sim cards may be ordered to be returned to the petitioner on interim custody. In support his argument, the petitioner’s counsel relied on the citation reported in **2003 (1) CTC 175 Sunderbhai Ambalal Desai /v/ State of Gujaraj.**

7. The learned Government Advocate (Crl.side) for the respondent has filed a counter affidavit and also contended that the revision petitioner posted message in social media intentionally to defame the Member of Parliament, Thiru Su.Venkatesan and also posted fake news insulting and promoting enmity between the two groups. Since the seized electronic gadgets are having passcode, all the tweeted messages were not extracted by the Centre for Development of Advanced Computing (CDAC), Thiruvananthapuram, Kerala. So, if the properties are returned to the revision petitioner he would corrupt the devices and tamper the evidences.



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8. On hearing both sides, it is clear that one Apple Laptop Model A2338, one Apple i.Pad Model A2378, two counts of Apple Mobile Phones and one count of Samsung Mobile phone with sim cards were seized by the respondent police from the revision petitioner based on the registered case upon the complaint received from the defacto complainant. The respondent has not objected that the revision petitioner is the owner of the above devices, which were seized from him on 16.06.2023 and also remanded before trial Court in RPR.No.90/2023 and they are still in Court custody. It is also clear that the seized devices were sent to the Forensic Science Department, Mylapoore, Chennai on 28.06.2023 and they were returned on 01.09.2023 stating that the properties could not be analyzed since the unlock passcode was not revealed by the revision petitioner. Then the seized devices were sent to the Centre for Development of Advanced Computing (CDAC), Thiruvananthapuram, Kerala, for acquisition and extraction of data/files from the internal memories. Cyber Forensic Analysis Report, dated 26.10.2023 was also received by the trial Court and the said report is filed along with the typed set. This was not disputed by the respondent police.

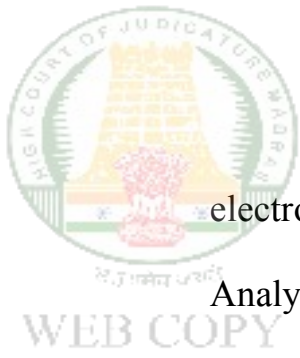


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9. A perusal of the report shows that “all the chats: Instagram, Native Messages, Telegram, Twitter and WhatsApp messages were found and extracted; email communications were found and extracted, list of installed applications and device locations were extracted; all the available internet artifacts were extracted; audio files, video files, picture files and documents were extracted and all the above extracted data are saved to a Pen Drive (labeled as USBStore01) attached with the analysis report. The respondent police has not placed any contra prima facie materials against the said analysis report sent by CDAC, Thiruvananthapuram, Kerala.

10. On perusal of the affidavit, the petitioner has clearly given an undertaking that he would not alienate or change the physical features of the devices in case of grant of interim custody and also he would produce the same before the Court as and when required. The Hon’ble Supreme Court issued guidelines in the **Sunderbhai Ambalal Desai** case reported in **2003 (1) CTC 175** in respect of return of seized properties.

11. As rightly submitted by the counsel for revision petitioner, if the cell phones are kept idle, they would get fully damaged due to full discharge of battery and also susceptible to become corrupt due to



electronic viruses as well as natural fungus. Since the Cyber Forensic Analysis Report is obtained by extracting all data and the same were saved to a separate pen drive, keeping idle of those seized electronic gadgets are no more necessity in the custody of the Court. Considering the overall facts and circumstances of the case, this Court is inclined to allow this Criminal Revision Case subject to conditions.

12. In the result, this Criminal Revision Case is allowed, and the order, dated 01.02.2024, passed in Crl.M.P.No.4211 of 2023 on the file of the learned Judicial Magistrate No.1, Madurai, is hereby set aside. Accordingly, all the seized properties (i.e.) one Apple Laptop Model A2338, one Apple i.Pad Model A2378, two counts of Apple Mobile Phones and one count of samsung mobile phone including sim cards are ordered to be returned to the petitioner on interim custody subject to the following conditions:

(i) The petitioner shall execute a bond for a sum of **Rs.4,50,000/- (Rupees Four lakhs Fifty Thousand only)** with two sureties for the like sum to the satisfaction of the learned Judicial Magistrate No.1, Madurai;

(ii) The aforesaid electronic devices shall be photographed in different angle in the presence of the Head Clerk of the Judicial Magistrate Court No.1,



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Madurai at the cost of the petitioner and the petitioner's signature to be obtained in the back side of the photographs and the said photographs and CD shall be kept in the case bundle for the purpose of marking them as material objects during trial;

(iii) The petitioner shall produce the aforesaid electronic devices before the Judicial Magistrate Court No.1, Madurai and also before the respondent police as and when required;

(vi) The petitioner shall not dispose or alienate the aforesaid electronic devices till the disposal of the case.

31.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Judicial Magistrate No.I,
Madurai
- 2.The Inspector of Police,
CCD-III,
Madurai City.
(In Crime No.24 of 2023)
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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