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Crl.R.C(MD)Nos.994 and 995 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)Nos.994 and 995 of 2024

1. G.Manikandan

... Petitioner in
Crl.R.C(MD)No.994 of 2024

2.C.Gokulraj

... Petitioner in
Crl.R.C(MD)No.995 of 2024

Vs.

The Inspector of Police,
Thottiyam Police Station,
Trichy District.
(Crime No.16 of 2024)

... Respondent in both Crl.R.Cs

PRAYER in Crl.R.C(MD)No.994 of 2024: This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, to call for the records in Crl.M.P.No.930 of 2024, dated 30.07.2024 on the file of the District Munsif-cum-Judicial Magistrate, Thottiyam and set aside the same and grant interim custody for POCO F4 5G (Night Black) 128GB IMEI No.869785060828122 and IMEI 2 No.869785060828130. One Plus Nord CE 8GB 5G (Bahamas Blue) IMEI No.863825062191719 and IMEI 2 No.863825062191701.



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PRAYER in Crl.R.C(MD)No.995 of 2024: This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, to call for the records in Crl.M.P.No.929 of 2024, dated 30.07.2024 on the file of the District Munsif-cum-Judicial Magistrate, Thottiyam and set aside the same and grant interim custody for the sum of Rs.86,850/-.

In Both Petitions:-

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

COMMON ORDER

These Criminal Revision Cases are directed against the order, dated 30.07.2024 passed in respective Crl.M.P.No.930 and 929 of 2024 on the file of the learned District Munsif-cum-Judicial Magistrate, Thottiyam and to set aside the same and to direct the learned District Munsif-cum-Judicial Magistrate to return the seized cell phones and cash to the respective revision petitioners on interim custody.

2.The brief facts of the case:

On 14.01.2024 at about 07.00 a.m., the respondent police while on patrol duty at Thottiyam Mudakku Salai in Namakkal-Trichy Main road, inspected the Car bearing registration number TN 37 CM 8370 driven by the accused Gokulraj accompanied with another accused Mytheeswaran.



On enquiry, accused Gokulraj confessed that he purchased tobacco from Bangaluru through phone call and also sold them on the way. The accused were found illegal possession of 30 kg HANS CHAAP TOBACCO and sale amount of CHAAP TOBACCO Rs.86,850/-. The above properties and two cell phones POCO F4 and One Plus were seized and they were arrested in the presence of witnesses. A case was registered in Crime No. 16 of 2024 U/s.6 and 24(1) of the Cigarette and Other Tobacco Products Act, 2003 and U/s. 328 of IPC and they were remanded before the concerned Judicial Magistrate Court. The petitioner/Manikandan filed the petition in Crl.M.P.No.930 of 2024 for return of cell phones POCO F4 5G & One Plus Nord CE 2 5G and the petitioner/Gokulraj filed the petition in Crl.M.P.No.929 of 2024 for return of cash Rs.86,440/- before the learned District Munsif-cum-Judicial Magistrate, Thottiyam. Both the petitions were dismissed vide separate order, dated 30.07.2024.

3. Aggrieved by the order of dismissal, the petitioners have come forward with these present Criminal Revision Cases.

4. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the records in these Criminal Revision Cases.



5. The learned counsel appearing for the revision petitioners has submitted that the petitioner/Manikandan is the owner of the cell phones.

The said cell phones are in the custody of the Court, which are being kept idle without use. It is further submitted that if the cell phones are kept unused the phone would get fully damaged. The petitioner/Manikandan is not an accused in this case and the cellphone did not stand in the name of the accused and the cell phones did not contain incriminating matter. He would further submit that the petitioner/Gokulraj has been arrayed as Accused No.1 in this case and he was in possession of loan amount to meet out his family expenses and his family's financial needs. The petitioner/Gokulraj was falsely implicated in this case and the cash was seized by the respondent police. Both the properties were remanded before the trial Court in RPR.No.37/2024. Therefore, interim custody of the above case properties may be granted to the petitioners.

6. The learned Government Advocate (Criminal Side) appearing for the respondent has filed the status report of the prosecution case and he would submit that the cell phones are used for the commission of crime i.e., illegal purchase of banned tobacco products and also the amount seized is the sale proceeds of banned tobacco products. The accused confessed that by contacting a person in Bangalore over phone only they



received tobacco products from Bangalore. The properties are material evidences for the prosecution case and if they are returned they would alienate them.

7. On hearing both sides, it is clear that the cell phones and cash were seized on 14.01.2024 upon the allegation of illegal possession of banned tobacco products. The respondent has not disputed that the petitioner/Manikandan is not arrayed as an accused and the cell phones stood in the name of the petitioner/Manikandan. It is the claim of the petitioner that if the cell phones are kept idle, they would get fully damaged. Admittedly, the properties were remanded before the trial Court under RPR.No.37/2024. 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. The learned Judicial Magistrate has declined to return the cell phones mainly on the ground that the prime accused stated that he contacted a person at Bangaluru through cell phones and that person, supplied banned tobacco goods. These could be substantiated through call details reports obtaining from the cellular company and oral evidences. Considering the above facts and circumstances, this Court is inclined to return the cell phones on interim custody. At the same time, the seized cash of Rs.86,850/- could not be



returned as the prosecution alleged that the amount is the sale price of banned tobacco products. Moreover, though the petitioner/accused/Gokulraj stated that he borrowed a loan for his family's needs, no material has been produced to substantiate the same. Hence, this Court is not inclined to allow the petition in Crl.R.C(MD)No.995 of 2024 for return of cash on interim custody and the cash is the material object for the prosecution case.

8. Accordingly, the Criminal Revision Case in Crl.R.C(MD)No.994 of 2024 is allowed, and the order, dated 30.07.2024 passed in Crl.M.P.No. 930 of 2024 on the file of the learned District Munsif-cum-Judicial Magistrate, Thottiyam, is hereby set aside. The Cell phones POCO F4 5G & One Plus Nord CE 2 5G remanded in RPR.No.37/2024 is ordered to be returned to the petitioner/Manikandan on interim custody subject to the following conditions:

(i) The petitioner/Manikandan shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties for the like sum to the satisfaction of the learned District Munsif-cum-Judicial Magistrate, Thottiyam;

ii) The cell phones POCO F4 5G & One Plus Nord CE 2 5G shall be photographed in different angle and the IMEI numbers shall also be photographed in the



presence of the Head Clerk of the learned District Munsif-cum-Judicial Magistrate, Thottiyam at the cost of the petitioner/Manikandan and the petitioner/Manikandan'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/Manikandan shall deposit the original invoice bill of the cell phones POCO F4 5G & One Plus Nord CE 2 5G before the learned District Munsif-cum-Judicial Magistrate, Thottiyam;

(iv) The petitioner/Manikandan shall produce the cell phones POCO F4 5G & One Plus Nord CE 2 5G before the learned District Munsif-cum-Judicial Magistrate, Thottiyam and also before the respondent police as and when required;

(v) The petitioner/Manikandan shall not dispose or alienate or change the physical features of the cell phones till the disposal of the case.

9. The Criminal Revision Case in Crl.R.C(MD)No.995 of 2024 is dismissed.

02.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The District Munsif-cum-Judicial Magistrate,
Thottiyam.
- 2.The Inspector of Police,
Thottiyam Police Station,
Trichy District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Order made in
Crl.R.C(MD)Nos.994 and 995 of 2024**

02.01.2025