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Crl.R.C.No.1299 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1299 of 2022

Sowdha Mani

...

Petitioner

Vs.

State Rep. by
The Inspector of Police,
Cyber Crime Unit, CCD-1,
Central Crime Branch,
Chennai City.

...

Respondent

(Crime No.16 of 2022)

This Criminal Revision case has been filed under Sections 397 r/w 401 of Code of Criminal Procedure to set aside the order dismissal passed by the learned Judicial Magistrate in Crl.M.P.No.2227 of 2022 and to return the mobile phone (I phone 7) seized from the petitioner in Cr.No.16 of 2022, on the file of the respondent.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

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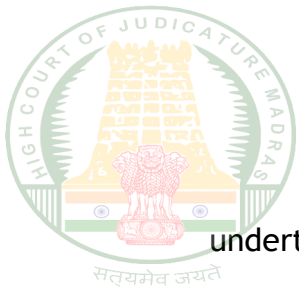
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ORDER

The present Criminal Revision Case has been filed against the order dated 22.07.2022 passed by the learned Judicial Magistrate No.1, Alandur, in Crl.M.P.No.2227 of 2022.

2. According to the petitioner, in connection with the case in Crime No.16 of 2022, her mobile phone viz., i-Phone 7, was seized by the respondent police on 09.07.2022. Seeking return of the said property, she moved Crl.M.P.No.2227 of 2022 under Section 451 Cr.P.C. before the learned Judicial Magistrate No.1, Alandur. However, the said petition came to be dismissed by the Court below by order dated 22.07.2022, which is impugned herein.

3. The learned counsel for the petitioner would submit that the mobile phone seized from the petitioner contains bank details and also certain documents, which are necessary for her day-to-day affairs. However, without considering the same in a proper perspective, the court below erred in dismissing the petition filed by the petitioner seeking return of the said property. The learned counsel would further submit that the petitioner



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undertakes to produce the subject property before the trial Court as and when required.

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4. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner belongs to a political party and the allegation levelled against her in Cr.No.16/2022 is that she has posted a message in her twitter account on 20.01.2022, thereby causing disturbance to the public peace and tranquility. According to the learned Additional Public Prosecutor, the subject property is essential for the purpose of investigation and it has to be marked as material object during the course of trial. It is also submitted that the subject property has been sent to the Forensic Science Laboratory, for analysis and the report is pending. Taking note of the same, the Court below rightly dismissed the petition filed by the petitioner. Therefore, according to the learned counsel, there is no requirement to interfere with the said order passed by the court below.

5. Heard the learned counsel on either side and perused the materials available on record.



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6. It could be seen that the respondent-Police registered a case in Crime No.16 of 2022 against the petitioner for the offences punishable under Sections 153, 505 (1)(b) and 505(2) IPC. During the pendency of the investigation, they seized the subject property belonging to the petitioner on 09.07.2022 and the same was produced before the Jurisdictional Magistrate on 15.07.2022 and thereafter, sent to the Forensic Science Laboratory for analysis on 06.08.2022 at the request of the Investigating Officer. While so, the petitioner preferred the petition seeking return of the subject property, which was dismissed by the court below by order dated 22.07.2022 on the premise that the investigation is at preliminary stage. Aggrieved over the same, the petitioner is before this court with the present criminal revision.

7. On 07.09.2022, when this matter was taken up for hearing, this Court directed the Registry to call for report from the learned Judicial Magistrate, Alandur as regards the date of production of the subject property to the Jurisdictional Magistrate as well as the date of sending the same to the Forensic Science Laboratory for analysis. Pursuant to the said direction, the learned Judicial Magistrate, Alandur sent a report dated 08.09.2022 to the effect that the cell phone viz., I-phone 7 plus was produced before the Court

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only on 15.07.2022 and at the requisition of the Investigating Officer, the same was sent to the Forensic Science Laboratory, Chennai on 06.08.2022. However, the report of the Forensic Science Laboratory has not been received, till date.

8. Such being the present position, this Court is of the view that since the subject property is a material evidence and is very much essential for investigation of the case and that, the report of the Forensic Science Laboratory is yet to be received, the order passed by the Court below in dismissing the petition filed by the petitioner for return of property, does not call for any interference.

9. In such view of the matter, this Criminal Revision Case fails and is accordingly, dismissed. However, liberty is given to the petitioner to file a fresh petition before the learned Magistrate, Alandur, after receipt of the report from the Forensic Science Laboratory with regard to the subject property.

10. Before parting, this Court wishes to observe that the Apex Court as well as the High Courts time and again held that it is mandatory on the part of the Investigating Officer(s) to produce the materials seized before the



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Jurisdictional Magistrate forthwith and the delay in production of the same, vitiates the entire proceedings. But, in many cases, the Investigating Officers did not act so. In the present case as well, the subject property was seized by the Investigating Officer on 09.07.2022 and the same was produced before the Jurisdictional Magistrate only on 15.07.2022; and the delay in producing the same was not explained by the Investigating Officer, which cannot be slightly brushed aside by this court, considering the nature of the offence involved herein. At this juncture, it would be relevant to refer to the decision in **Arjun Marik and others v. State of Bihar [(1994) Supp (2) SCC 372]**, wherein, the Hon'ble Supreme Court dealt with a word 'forthwith' occurring in section 157 Cr.P.C and held that 'forthwith' means 'without any undue delay' and 'immediately'. The relevant portion in para 24 reads as follows:

"24. The matter does not stop here. There is yet another serious infirmity which further deepens the suspicion and casts cloud on the credibility of the entire prosecution story and which has also been lost sight of by the Trial Court as well as the High Court and it is with regard to the sending of occurrence report (FIR) to the Magistrate concerned on 22.7.85 i.e. on the 3rd day of the occurrence. Section 157 of the CrPC mandates that if, from information received or otherwise, an Officer-in-charge of Police Station has reason to suspect the commission of an offence



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which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empower to take cognizance of such offence upon a police report. Section 157, Cr. P.C. thus in other words directs the sending of the report forthwith i.e. without any delay and immediately. Further, Section 159, Cr. P.C. envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the CrPC. The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word "forthwith" occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157 and 159 Cr. P.C. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch in the progress of the investigation."

Thus, it is crystal clear that the Investigating Officer should produce the materials seized/ recovered to the jurisdictional magistrate forthwith, after following due formalities. However, the Investigating officer of the present



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case did not produce the subject property immediately after seizure, and produced the same with a delay of 6 days, which would be detrimental to the case of the prosecution. No explanation was also forthcoming on his part for not sending the subject property to the jurisdictional magistrate soon after recovery. Hence, this court directs the Director General of Police, to take stringent action against the Investigating Officer of the case in Cr.No.16/2022 for not producing the subject property to the jurisdictional magistrate, soon after recovery, besides giving instructions to all the Investigating Officers to produce the material objects to the court concerned immediately; and file a report to that effect.

11. Post the matter for reporting compliance on 26.10.2022.

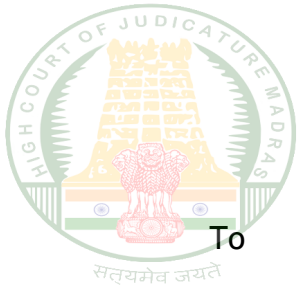
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Speaking Order

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To

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- 1.The Judicial Magistrate No.I,
Alandur.
- 2.The Public Prosecutor,
Chennai.
- 3.The Director General of Police,
Dr.Radhakrishnan Salai, Mylapore, Chennai-600 004
Chennai.



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P.VELMURUGAN, J.,

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