



CrI.O.P.(MD) No.12494 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.09.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD) No.12494 of 2023

L.Gnanambal
Branch Manager
Sivagangai District Central Cooperative Bank Limited,
Pallathur Branch, Sivagangai District. ... Petitioner

Vs.

1. The Superintendent of Police,
O/o.The Superintendent of Police,
Sivagangai District, Sivagangai.

2.The Inspector of Police,
Pallathur Police Station,
Karaikudi Taluk,
Sivagangai District.

3.The Sub-Inspector of Police,
Pallathur Police Station,
Sivgangai District.
Crime No.38/2023

4.Thavamani

5.Solai

6.Karuppaiah ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records relating to the FIR in Crime No.38 of 2023 on the file of the third respondent police and quash the same.



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For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This petition has been filed seeking quashment of communication dated 25.05.2023 in respect of Crime No.38 of 2023 for the offences under Section 454 and 380 of IC on the file of the third respondent police.

2. The facts in brief which are not disputed are that the respondent No.4 has pledged some jewels with the petitioner/Sivagangai District Central Cooperative Bank Limited (in short "Cooperative Bank"). The petitioner/Bank has lent money to the fourth respondent on pledging gold jewels. The third respondent/Sub-Inspector of Police, Pallathur Police Station, Sivagangai District, has issued the impugned communication dated 25.05.2023, stating that pursuant to a complaint of theft received by the police, a case has been registered in Crime No.38 of 2023 for the offences under Section 454 and 380 of IPC and that the respondents 4 to 6 who were involved in the alleged theft have confessed with the police that pledged jewels with the petitioner Bank and thereby



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respondents police sought for return of the pledged jewels by the respondents 4 to 6 to the respondents police.

3. It is further submitted by the learned counsel for the petitioner/Cooperative Bank that the petitioner company is registered under the provisions of Tamil Nadu Cooperative Societies Act and doing business as per the guidelines framed by the Reserve Bank of India. Whenever a customer pledges jewels for availing loan, Know Your Customer (KYC) is being obtained by the petitioner Bank, photograph of the applicant is being taken in the premises itself and after confirming the status and background of the customer as to whether he is a genuine customer and after evaluation by the trained Branch Managers, request for the loan on pledging the jewels will be processed.

4. It is further submitted that if the respondents 2 and 3 are allowed to recover the jewels from the petitioner Bank without repaying the loan amount, the rights of the Bank would be adversely affected, since the bank is carrying on the business out of public money thereby the interest of the public would affect at large.



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5. It is submitted by the learned counsel for the petitioner that even according to the FIR, Brass, White Metal, Aluminium, Wood, iron and other miscellaneous items were stolen from the house situated at Kila Mel 9th Street, Pallathur, but the respondents police come to the conclusion that jewels were stolen from the said house, were pledged in Pallathur Branch of the Cooperative Bank.

6. It is further submitted that there is no possibility for the petitioner Bank to ascertain the ownership of the jewel thereby the petitioner Bank at the time of advancing jewel loan will get KYC from the customer and get a declaration and also keeping the identity cards and photographs etc. It is submitted that the respondents police have no authority for pressurizing the petitioner company to hand over the jewels to them on the ground that the jewels are required for further investigation in respect of Crime No.38 of 2023.

7. Learned Additional Public Prosecutor submits that the petitioner Bank has not followed the norms and procedures ought to have been



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followed prior to advancing loans on pledging of jewels. It is submitted that the Branch Manager of the petitioner's company should have entertained a doubt when huge jewels are being deposited, and that even though the petitioner company stated to have collected Aadhar Card and photograph of the person, who has been borrowed the loan on pledging the jewels, still the petitioner could have considered the financial status and other connected aspects to see whether the person who is pledging the jewel was having capacity to buy the said jewel. Similarly, it is also submitted that the petitioner company should have demanded the receipt for the purchase of gold jewels or should have asked the borrower as to in which shop the borrower has purchased the jewel, thereby, sought for dismissing this petitions.

8. Now, the question therefore would arise is as to whether the impugned letter given by the respondents police on 25.05.2023 can be quashed.

9. Admittedly, the respondents police have registered case in Crime No.38 of 2023 against the unknown person for the offences



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punishable under Sections 454 and 380 of IPC. The investigation is not completed so far. There is no record placed before the Courts by the respondents police that the respondents 4 to 6 have committed the offence. The only allegation against the petitioner Bank is that it has not followed proper procedure while advancing the loan to the various customers.

10. The respondents police by their impugned communication has directed the petitioner Bank to hand over the pledged jewels which were deposited with the petitioner Bank. So far as the petitioner Bank is concerned, once the money which was advanced on the pledged jewels is paid back to the petitioner Bank, they would return to the persons who have deposited the gold jewels. However, merely because the petitioner Bank has done the entire exercise of advancing money on pledging of the gold jewels, bonafidely, it does not mean that the gold jewels if at all required in the criminal case cannot be seized. At the same time, merely because the gold jewels are required in a criminal case, they cannot be seized from the petitioner Bank without considering the interest of the Bank. In case, if the gold jewels are handed over to the police for the



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purpose of investigation, there is every possibility that the owners of the said gold jewels may likely to file petitions under Section 451 of Cr.P.C for interim custody of the jewels. In case, if the gold jewels were given to the owners under Section 451 of Cr.P.C., and after conclusion of the entire trial, the Court may also likely to pass orders in favour of its owners under Section 452 of Cr.P.C. Thereby, ultimately, the petitioner Bank will certainly deprived of the loan amount advanced by them on pledging of gold jewels. In the contrary, if the gold jewels are in the bank and if the persons who pledged the jewels pays back the loan amount to the bank, the petitioner Bank may return the jewels to them, in which case it will be difficult to secure the jewels during the course of investigation and also during the course of trial. Further, after full-fledged trial accused may also get clean acquittal and may also claim ownership of the jewels.

11. Therefore for the purpose of investigation and trial, the gold jewels are required to be kept safely until trial is completed. Thereby if an order is passed directing the petitioner Bank not to return them to the accused or not to auction gold jewels and keep them with the petitioner



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Bank itself intact until entire investigation is completed. Depending upon the directions of the learned Magistrate, the petitioner Bank can produce the jewels before the trial Court during the course of trial. In case, if during the course of investigation, police requires the gold jewels for the purpose of conducting of Test Identification Parade of the properties, then the concerned police can direct the petitioner Bank to produce the gold jewels, on which, the responsible officer of the petitioner Bank will have to produce them at the given date and time after completion of identification parade, the officer of the petitioner Bank will take the jewels back and deposit them in the safe custody with the petitioner Bank.

12. Considering the discussions made above, this petition is disposed of with the following directions:-

1. The petitioner Bank is directed to keep the gold jewels as described in the petition intact with the petitioner Bank itself in safe custody;
2. The petitioner Bank shall not sell or auction the petition mentioned gold jewels without permission of the Court;



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3. The petitioner Bank shall not return them to the persons who have pledged them even if they discharge the loan amount;

4. The petitioner Bank shall produce the gold jewels as and when required by the respondents police during the course of investigation if at all the police intend to conduct Test Identification Parade or for any other similar purpose;

5. The petitioner Bank shall also produce the gold jewels before the trial Court as per the direction of the trial Court during the course of trial;

6. The trial Court is directed not to consider application under Section 451 of Cr.P.C. and is directed to pass appropriate orders at the time of disposal of the main case in Crime No.38 of 2023 under Section 452 of Cr.P.C. on hearing all the parties concerned including the petitioner Bank. If at all any application is filed under Section 451 of Cr.P.C., the trial Court shall issue notice to the petitioner Bank before considering the same;



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7. In case, if the petitioner Bank or the respondents police aggrieved by the orders passed under Section 452 of Cr.P.C. by the learned Magistrate, then the aggrieved party can approach the appropriate Court to challenge the same; and

8. The gold jewels should be photographed at the cost of the petitioner Bank and prepare a list of the jewels and hand over to the respondents police.

22.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN



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To

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O/o. The Superintendent of Police,
Sivagangai District, Sivagangai.
2. The Inspector of Police,
Pallathur Police Station,
Karaikudi Taluk,
Sivagangai District.
3. The Sub-Inspector of Police,
Pallathur Police Station,
Sivagangai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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