



W.P.(MD)Nos.23764 and 23867 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:18.07.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

W.P.(MD)Nos.23764 and 23867 of 2022

and

W.M.P.(MD) Nos.17826, 17827, 17938 & 17939 of 2022

W.P.(MD)No.23764 of 2022

Muthoot Fincorp Ltd.,
Athiramapattinam Branch,
Old No.322/1, New No.322/21,
Ever gold Complex, First Floor,
Athiramapattinam - 614 701.
Thanjavur District.

... Petitioner

Vs.

1. The Inspector of Police,
District Crime Branch,
Thanjavur District,
Thanjavur.

2. S.A.Abdul Hameed
(R2 is impleaded vide Court order
dated 22.06.2023 in WMP(MD) No.20118/2022)

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the proceedings of the impugned seizure proceedings dated 06.10.2022 passed by the respondent police, quash the same.



W.P.(MD)Nos.23764 and 23867 of 2022

W.P.(MD)No.23867 of 2022

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Thr Branch Manger,
Muthoot Finance Ltd.,
Athiramapattinam Branch,
Setu Road, Adirampattinam,
Thanjavur District.

... Petitioner

Vs.

1. The Deputy Superintendent of Police,
District Crime Branch,
Thanjavur District, Thanjavur.
2. The Inspector of Police,
District Crime Branch,
Thanjavur District, Thanjavur.
3. Haja Sharif
4. Dhinakaran
5. Shaike Abdul Khader
6. Vinithkumar
7. Kannan
8. Abiganesh
9. Manikandan
10. Ramesh
11. Barvin
12. Asharaf Ali



W.P.(MD)Nos.23764 and 23867 of 2022

13. Nooriya Ammal

14. Senthil Nathan

15. Soundara Rajan

16. Mohamed Reesa

17. Sundarajan

18. S.A.Abdul Hameed

(R18 is impleaded vide Court order

dated 22.06.2023 in WMP(MD) No.19961/2022)

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the impugned notification passed by the 1st respondent under proceeding no. Nil, dated 23.8.2022 and the consequential impugned notification passed by the 2nd respondent under proceeding no. Nil dated 29.9.2022 both relating to the jewels pledged by the respondents 3 to 17 and to quash the same as illegal and further forbear the 1st and 2nd respondent from seizing the jewels pledged by the respondents 3 to 17 with the writ petitioner.

For Petitioner : Mr.P.Pethu Rajesh (in both W.Ps.)

For Respondents : Mr.SS.Madhavan
Government Advocate (Crl. Side)
for R1 (in W.P.(MD) No.23764/22)
for R1 and R2
(in W.P.(MD) No.23867/22)
Mr.S.M.A.Jinnah
for R2 (in W.P.(MD) No.23764/22)
for R18 (in W.P.(MD) No.23867/22)



W.P.(MD)Nos.23764 and 23867 of 2022

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COMMON ORDER

These writ petitions are filed to set aside the proceedings dated 06.10.2022, 23.08.2022 and 29.09.2022, as illegal.

2. The facts in brief which are not disputed are that the respondents 3 to 17 have pledged some jewels with the petitioner/Muthoot Finance Ltd., Sethu Road, Athiramapattinam Branch, Thanjavur District. The second respondent/Inspector of Police, District Crime Branch, Thanjavur, has issued the impugned notification dated 23.08.2022 and consequential impugned notification by the second respondent himself dated 29.09.2022, wherein, it is mentioned that pursuant to a complaint received from respondent No.18, case has been registered in Crime No.25 of 2022 and investigation is in progress and therefore, the petitioner institution shall not allow respondents 3 to 17 to redeem the pledged jewels or not to auction the jewels temporarily, until further information.



W.P.(MD)Nos.23764 and 23867 of 2022

3. It is submitted by the learned Senior Counsel for the petitioner/Finance Institution that the petitioner company is a non-banking company registered with Reserve Bank of India and has been scrupulously following fair practices as enumerated by Reserve Bank of India. Whenever a customer pledges jewels for availing loan, Know Your Customer (KYC) is being obtained by the petitioner institution, 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 evaluating by the trained Branch Managers, request for the loan on pledging the jewels will be processed.

4. It is further submitted that the respondents 3 to 17 have independently approached the petitioner's institution and requested for advancing the loan by pledging the jewels. As the said jewels were old in nature, jewels were subjected to preliminary scrutiny by scratching the outer layer of the jewels and after confirming that all the jewels are genuine gold articles. KYC, Aadhar Card, Pan Card of respondents 3 to 17 were collected and after satisfying that the respondents 3 to 17 are genuine customers, the petitioner institution have processed their request



W.P.(MD)Nos.23764 and 23867 of 2022

and accordingly, taking the jewels as pledge, loan amount was advanced to them.

5. It is further case of the petitioner that the second respondent has suddenly visited their premises and served the impugned notification dated 23.08.2022 and provided the Crime No.25 of 2022, for the offences under Sections 408, 420, 474A of IPC. The first respondent has asked the petitioner to provide the details of jewels pledged by respondents 3 to 17 stating that the first respondent is going to seize the said jewels. The second respondent has issued further notification dated 29.09.2022 asking the petitioner not to auction the jewels and not to permit respondents 3 to 17 to redeem.

6. It is submitted by the learned counsel for the petitioner that as on date of pledging of jewels by respondents 3 to 17, there was no criminal case pending either against respondents 3 to 17 or in respect of the jewels which were pledged and the petitioner company has followed the procedure while advancing loans on pledging the jewels. It is submitted that the first and second respondents though passed the



W.P.(MD)Nos.23764 and 23867 of 2022

impugned notifications dated 23.08.2022 and 29.09.2022, the copy of the FIR has not been given, according to which, that one A.Haja Sharif, has misappropriated the jewels pledged with Athirai Paithumal by replacing the original jewels with fake jewels and that the said Haja sharif has pledged the original jewels with the petitioner company in the name of several persons.

7. It is submitted that issuance of notifications dated 23.08.2022 and 29.09.2022 is totally unfair and there is a possibility of collusion and conspiracy among the accused and defacto complainant thereby, deliberately created the third party interest by pledging the gold with the petitioner and thereby confiscating such jewels is improper. It is further submitted that there is no possibility for the petitioner company to ascertain the ownership of the jewel thereby the petitioner company 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 1 and 2 have no authority or order of the Court for pressurizing the petitioner company to hand over the jewels to them quoting that the jewels are required for further investigation in



W.P.(MD)Nos.23764 and 23867 of 2022

respect of Crime No.25 of 2022. It is also submitted that on the pressure of respondents 1 and 2, the Branch Manager of the petitioner's company has appeared before the respondents police several times. The respondents police have not been following the due process and therefore sought for quashment of the impugned notifications.

8. Learned Additional Public Prosecutor submits that the petitioner company has not followed the norms and procedures ought to have been 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 in which shop the borrower has purchased the jewel. It is submitted that the



W.P.(MD)Nos.23764 and 23867 of 2022

petitioner is also in collusion with the other accused as deliberately advanced the loan amount on pledging the gold jewels and therefore, sought for dismissing these petitions.

9. Now, the question therefore would arise is as to whether the impugned notifications given by the respondents 1 and 2 on 23.08.2022 and 29.09.2022 can be quashed. According to the respondents 1 and 2 police, the Manager of Athirai Paithumal Society has committed various offences in respect of the jewels that were deposited by the members and by replacing the said gold ornaments with fake gold jewels has deposited the same in the petitioner's company through various persons. The respondents police have registered case in Crime No.25 of 2022 against the Manager of the Society and others for the offences punishable under Sections 408, 420, 474A of IPC. The investigation is not completed so far. There is no record placed before the Courts by the respondents 1 and 2 police that the Branch Manager of the petitioner's company is also committed the offence along with the Manager of the Society. The only allegation against the petitioner company is that the Manager has not followed proper procedure while advancing the loan to the various



W.P.(MD)Nos.23764 and 23867 of 2022

customers.

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10. On perusal of the list of 29 persons, who have pledged the gold jewelry, some of the persons stated to have deposited the gold repeatedly and borrowed the amount. As rightly submitted by the learned Additional Public Prosecutor, the Manager of the petitioner's company should have entertained some doubt as to the capacity of the persons who have been repeatedly coming and depositing the gold jewels and taking amount. However, merely because the Manager of the petitioner's company has not entertained any suspicion, it does not mean the Manager is also involved along with other accused. It is not the case of the prosecution that the petitioner company has purchased the 28 items of gold jewels for a cheaper price than the market price. It is also not the case of the prosecution that the petitioner company is charging exorbitant interest insofar as the 28 items of gold jewels are concerned. Except the fact that the Manager of the petitioner's company has not done due diligence or entertained any doubt, rest of the procedures followed by the Branch Manager of the petitioner company is similar to that of any other customers. Therefore, *prima facie*, the conduct of the petitioner cannot



W.P.(MD)Nos.23764 and 23867 of 2022

jewels. However, merely because the petitioner company has done the entire exercise of advancing money on pledging of the gold jewels, bonafidely, it does not mean that all the 29 items gold jewels if at all required in the criminal case cannot be seized. At the same time, merely because the 29 items gold jewels are required in a criminal case, they cannot be seized from the petitioner company without considering the petitioner company's interest. In case, if the 29 items gold jewels are handed over to the police for the 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 these 29 items 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 company will certainly deprived of the loan amount advanced by them in favour of 29 individuals.

13. The question is whether for the purpose of investigation and trial, whether the gold jewels are required and if so, where the gold



W.P.(MD)Nos.23764 and 23867 of 2022

jewels are to be kept until trial is completed. As already observed above,

in case if these gold jewels are handed over to the police, they are required to deposit the same in the Court and the Court may likely to pass orders either for interim custody or final custody depending upon the stage and trial of the case. Therefore, so far as the investigation is concerned, if an order is passed by this Court directing the petitioner company not to auction the 29 items of gold jewels and keep them with the petitioner company itself intact until entire investigation is completed, then depending upon the directions of the learned Magistrate or trial Court, the petitioner company can produce before the trial Court at the time of trial. In case, if during the course of investigation, police requires the 29 items of gold jewels for the purpose of conducting of Test Identification Parade of the properties, then the concerned police can direct the petitioner company to produce the 29 items of gold jewels, on which, the responsible officer of the petitioner company will have to produce them at the given date and time after completion of identification parade, the officer of the petitioner company police will take the jewels back and deposit in the safe custody with the petitioner company.



W.P.(MD)Nos.23764 and 23867 of 2022

WEB COPY

14. On perusal of the notifications of the respondents 1 and 2, it is clear that the respondents police did not ask for handing over of the jewels during the course of investigation, the notifications only speak that the 29 items of gold jewels shall not be auctioned. As the respondents 1 and 2 police are not intending to seize the jewels, these petitions are disposed of with the following directions:-

1. The petitioner company is directed to keep all the 29 items of gold jewels as described in the petition intact with the petitioner company itself in safe custody;

2. The petitioner company shall not sell or auction all the 29 items of gold jewels without permission of the Court;

3. The petitioner company shall produce these 29 items of gold jewels as and when directed 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;

4. The petitioner company shall also produce the 29 items of gold jewels before the Court in case the trial Court directs the petitioner company to produce them during the course of trial;



W.P.(MD)Nos.23764 and 23867 of 2022

5. 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.25 of 2022 in respect of disposal of the property under Section 452 of Cr.P.C. If at all any application is filed under Section 451 of Cr.P.C., the trial Court shall issue notice to the petitioner company before considering the same;

6. In case, if the petitioner company 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

7. The 29 items of gold jewels should be photographed at the cost of the petitioner company and a list is to be prepared and the same is to be signed by the petitioner company.

There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

18.07.2023

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

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W.P.(MD)Nos.23764 and 23867 of 2022

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To

1. The Deputy Superintendent of Police,
District Crime Branch,
Thanjavur District, Thanjavur.
2. The Inspector of Police,
District Crime Branch,
Thanjavur District, Thanjavur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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W.P.(MD)Nos.23764 and 23867 of 2022

DR.D.NAGARJUN,J

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W.P.(MD)Nos.23764 and 23867 of 2022

Dated:18.07.2023