



W.P.(MD) No.22322 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2023

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

W.P.(MD) No.22322 of 2023

and

W.M.P.(MD) Nos.18607 and 18608 of 2023

Muthoot Fincorp Ltd.,
rep.by its Area Manager,
having Regional Office at Mahesh Complex,
Bye pass Road,
Madurai

... Petitioner

Vs.

1.The Inspector of Police,
District Crime Branch,
Office of the District Police,
Korampallam,
Tuticorin.

2.Crana @ Grena

3.A. Joseph

4.Jeyalakshmi Sundaralingam

5.Kannan Jothi



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6.Muthulakshmi P

7.Santhosh R

8.Ashokkumar Avudaiappan

9.Chinna Durai S

10.Karuppasamy T

11.Lingapushpam Satyaraj

12.Mathankumar S

13.Murugan J

14.Ramakrishnan T

15.Sanmugaraj M

16.Selvi A

17.Senthurmani M

18.Senthurpandi K

19.Subburaj N

20.Rajalakshmi Soolayppan

21.A.Ishwariya

22.Alagu Thenmozhi Selvam

23.Mariappan Velsamy



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- 24.Rajkumar Paneerselvam
- 25.C.Prabakaran
- 26.Kalyana Sunderraj
- 27.Amutha P
- 28.Mariselvi M
- 29.Sathiya Raj T
- 30.Arullingam Sundaralingam
- 31.Emalok Samuel
- 32.George Antony
- 33.Senthilmurugan S
- 34.Yesurajan A
- 35.Kishore Rahul R
- 36.Mariselvam S
- 37.Pattumariappan P
- 38.Sivasamy Sakkarapandy
- 39.Arunkumar Thangavel
- 40.Jayaganesan P
- 41.Malati Kombu Madasamy



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42.Bharath K

43.Palanisamy S

44.Sundaravinayagam R

45.Subbulakshmi S

46.Rakesh J

47.Jegan

48.Kaniraj Mariappan

49.T.Velu Rajasekaran

50.Petchiraj Palaiah

51.Balakrishnan Jayaraj

52.Prabakaran Balaji

53.Sneneka Thangadurai

54.N.Veerapagu

55.Thange Vellammal

56.A.David

57.Malliga Devi Arputhuraj

58.Anand Moorthy

59.Muthumurugan Avudaiappan

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the orders passed by the 1st respondent under Proceeding No. Nil, dated 04.09.2023 and to quash the same as illegal and further forbear the respondent from seizing the Gold Jewels pledged by the respondents 2 to 59, which are pledged with the writ petitioner, in the light of the legally enforceable Charge created by the petitioner.

For Petitioner : Mr.K.R.Laxman

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)
for R1

ORDER

This writ petition is filed to set aside the proceedings dated 04.09.2023, as illegal.

2. The facts, in brief, which are not disputed, are that the respondents 2 to 59 have pledged some jewels with the petitioner/Muthoot Fincorp Ltd., having Regional Office at Mahesh Complex, Madurai. The first respondent/Inspector of Police, District Crime Branch, Tuticorin, has issued the impugned notification dated 04.09.2023, wherein, it is mentioned that pursuant to the case in Crime No. 27 of 2023, the investigation is in progress and therefore, the petitioner institution



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shall hand over all the jewels, which were pledged by the unofficial respondent Nos.2 to 59.

3.It is submitted by the learned 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 2 to 59 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



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Card of respondents 2 to 59 were collected and after satisfying that the respondents 2 to 59 are genuine customers, the petitioner institution have processed their request and accordingly, taking the jewels as pledge, loan amount was advanced to them.

5.It is further case of the petitioner that the first respondent has suddenly visited their premises and served the impugned notifications dated 04.07.2023 and 04.09.2023. The first respondent has asked the petitioner to provide the details of jewels pledged by respondents 2 to 59 stating that the first respondent is going to seize the said jewels.

6.It is submitted by the learned counsel for the petitioner that as on date of pledging of jewels by respondents 2 to 59, there was no criminal case pending either against respondents 2 to 59 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 respondent though passed the impugned notification dated 04.09.2023, the copy of the FIR has not been given.



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7.It is submitted that issuance of notification dated 04.09.2023 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 respect of Crime No.27 of 2023. It is also submitted that on the pressure of respondent No.1, the Branch Manger 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 Government Advocate (Crl.side) submits that the petitioner company has not followed the norms and procedures ought to have been followed



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WEB COPY 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 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 this petition.

9.Now, the question therefore would arise is as to whether the impugned notification given by the respondent No.1 on 04.09.2023 can be quashed. According to the respondent police, the Manager of the society has committed various offences in respect of the jewels that were deposited by the members and



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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.27 of 2023 against the Manager of the Society and others for the offences punishable under Sections 406, 420, 294(b) and 506(i) IPC. The investigation is not completed so far. There is no record placed before the Courts by the respondent 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 customers.

10. On perusal of the list of 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 Government Advocate (Crl.side), 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



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prosecution that the petitioner company has purchased the 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 gold jewels are concerned. Except the fact that the Manger 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 be suspected.

11.The respondent police by their impugned notifications have directed the petitioner company to hand over the jewels pledged by the respondent Nos.2 to 59. The impugned notification did not speak that the police are going to seize those gold articles. Though, the learned counsel for the petitioner has submitted that the respondent police have asked the petitioner to give the details of gold jewels as the respondent No.1 police is intending to seize the said gold jewels, no record is filed before the Court expressing the intention that the police are intended to seize the gold jewels.



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12.The items of jewels have deposited in the petitioner company belonging to various members of the Society. The said Society has also advanced money to its members by taking the gold jewels and those gold jewels were re-deposited before the petitioner company. So far as the petitioner company is concerned, once the money is paid back to the petitioner company, they would return to the persons who have deposited the gold 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 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 company without considering the petitioner company's interest. In case, if the 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 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



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company will certainly deprived of the loan amount advanced by them in favour of 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 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 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 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 gold jewels, on which, the responsible officer of the petitioner company will have to produce



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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.

14. On perusal of the notifications of the respondent No.1 police, 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 gold jewels shall be given. As the respondent police are not intending to seize the jewels, this petition is disposed of with the following directions:-

1. The petitioner company is directed to keep all the 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 gold jewels without permission of the Court;
3. The petitioner company shall produce these 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;



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

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.27 of 2023 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 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.



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

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

The Inspector of Police,
District Crime Branch,
Office of the District Police,
Korampallam,
Tuticorin.



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DR.D.NAGARJUN, J.

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