

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.06.2015
Delivered on : 11.06.2015

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

WP.No.23493 of 2014
and
M.P.No.1 of 2014

S.Palanivel

... Petitioner

Versus

1. The Regional Director,
The Reserve Bank of India,
No.16 Rajaji Salai, Chennai-1.
2. The District Collector,
Erode District, Erode.
3. The Assistant General Manager,
State Bank of India, Erode District, Erode.
4. The Superintendent of Police,
Erode District, Erode.
5. Ravichandran,
The Chief Manager, State Bank of India,
Erode District, Erode.
6. Siva Subramaniam,
Inspector of Police, Modakurichi Police Station, Erode.
7. Gomathy,
Sub Inspector of Police,
Modakurichi Police Station, Erode.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of MANDAMUS directing the respondents 1 to 4 to take suitable action against the respondents 5 to 7 for their illegal and unlawful activity in abducting petitioner's Chevrolet Car bearing register number TN33 AT 9556 in view of the representations dated 04.08.2014, 05.08.2014 and 13.08.2014.

For Petitioner : Mr.Jaikumar
for M/s.M.Guruprasad

For Respondents : Mr.P.Sanjay Gandhi, AGP [for R2 and R4]
Mr.P.D.Audikesavalu [for R3 and R5]
Mr.R.Vijayakumar [for R6]

O R D E R

This Writ Petition has been filed praying to direct the respondents 1 to 4 to take suitable action against the respondents 5 to 7 for their illegal and unlawful activity in abducting petitioner's Chevrolet Car bearing register number TN33 AT 9556 in view of the representations dated 04.08.2014, 05.08.2014 and 13.08.2014.

2. It is the case of the petitioner that he had purchased a Chevrolet Spark car on 30.05.2011 availing vehicle loan from the State Bank of India, Erode branch and agreeing to pay EMI of Rs.7,200/- per month. According to the petitioner, he was paying the EMI regularly without default till March 2014 and being an agriculturist, he did not have steady income and therefore, he was unable to pay for four months.

3. It is the allegation of the petitioner that on 02.08.2014, Mr.Ravichandran, Chief Manager of State Bank of India, Egmore came along with some henchmen and stormed into the house of the petitioner and questioned him as to why he has not paid the monthly instalments and forcibly took away the Chevrolet car from him. Aggrieved by the high handedness of the officer of the State Bank of India, the petitioner lodged a complaint and also approached the Human Rights Commission for redressal.

4. In this petition, the petitioner is seeking for a Writ of Mandamus for a direction to take suitable action against Ravichandran and others for taking away his car. On notice, the respondent has filed a counter affidavit denying all the allegations made by the petitioner. The respondent has admitted the loan transaction and in paragraph No.6, it is stated as follows:

"I submit that in the aforesaid circumstances, the Bank represented by the 5th respondent along with the Recovery Agents lawfully appointed by the Bank for that purpose went to the residence of the petitioner at No.72, Kannan Kadu, Muthur Main Road, Chinniampalayam Post, Modakurichi, Erode - 638 104, on 02.08.2014 and called upon the petitioner to immediately pay the entire dues till then or to forthwith hand over the hypothecated

vehicle to the Bank, but he refused to comply with the lawful demand made and highhandedly proceeded to lock the gate of his house wrongfully confining the 5th respondent and the Recovery Agents of the Bank who had accompanied him. Hence, the 5th respondent had no other option than to seek assistance from the Modakurichi Police Station for releasing him from the wrongful confinement of the petitioner. When the Police officials arrived at the spot and made enquiries, the petitioner offered to make an immediate part payment of Rs.7,000/- only towards that car loan and informed that he would be in a position to pay the balance amount later on. It was made clear by the 5th respondent that the Bank had an indefeasible legal right to take possession of the hypothecated vehicle in terms of the contract between the parties when there has been default in the repayment of the loan and the petitioner could not resist the same without paying the entire dues that had fallen due. At that stage, the petitioner informed that he would not handover the hypothecated vehicle to the Bank, but was willing to leave the same in the custody of the police officials at Modakurichi Police Station. The petitioner then drove that vehicle to Modakurichi Police Station, but he was reluctant in the beginning to give the key of the hypothecated car to the Inspector of Police, Modakurichi Police Station and made insinuating remarks against the Police Officials there. The Inspector of Police, Modakurichi Police Station, sensing that a law and order was being created by the petitioner, verified from the 5th respondent about the right of the Bank to take possession of the hypothecated vehicle for default in payment of the dues and was convinced that its claim was justified and in accordance with law. At that stage, the petitioner, on his own volition, handed over the key of the hypothecated vehicle to the 5th respondent so as to enable the Bank to take possession of the hypothecated vehicle and retain it in safe custody till further action. It is reiterated that there has not been any forcible seizure of hypothecated vehicle by employing any musclemen as recovery agents and that it was the petitioner, who had himself handed over the hypothecated vehicle, to the 5th respondent, who is a responsible officer of the Bank and has been authorised in that regard."

5. On reading of paragraph No.6, it reveals that the petitioner had illegally confined the bank officials when they came to his house for taking possession of the car. Judgments recognising the right of financiers to take possession of vehicles covered under hypothecation agreement for default of payment by the borrowers is in legion. Suffice to refer to the judgment of

Supreme Court in Charanjat Singh Chadha and Others Vs Sudir Mehra reported in AIR 2001 SC 3721.

6. The assertion of the petitioner that the Manager of the State Bank of India had acted overzealously for recovering the dues appears little incredible. Had officers of nationalised banks worked with zeal, there would not have been such a whooping increase in NPA accounts in the country warranting introduction of stringent Banking Laws like DRT Act, SARFAESI Act, etc. by the Parliament with the objective of protecting public wealth. On the contrary, the petitioner could have also shown his bonafide by surrendering the vehicle honourably when once he realised that he is unable to pay the dues.

7. Bearing in mind that the State Bank of India is a public sector bank and when the bank officials take lawful steps for recovery, their actions should not be scuttled on frivolous allegations. In fact, the police should have registered an FIR against this petitioner for wrongfully confining the officials and preventing public servants from performing their official duties. In the opinion of this Court, this Writ Petition has been filed as a pre-emptive measure for self protection against prosecution. Hence, the Inspector of Police, Modakurichi Police Station, Erode [6th respondent] is directed to take appropriate action against this petitioner for illegally confining the bank officials and others.

8. With the above direction, this Writ Petition is dismissed with cost of Rs.10,000/- [Rupees ten thousand only] payable by the petitioner to the Tamil Nadu Legal Services Authority. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Regional Director,
The Reserve Bank of India,
No.16 Rajaji Salai, Chennai-1.
2. The District Collector,
Erode District, Erode.

3. The Assistant General Manager,
State Bank of India, Erode District, Erode.
4. Sivasubramanian,
The Superintendent of Police,
Erode District, Erode.
5. The Inspector of Police,
Modakurichi Police Station,
Erode.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.28513
+1cc to Mr.P.D.AudiKesavalu, Advocate, S.R.No.28435

WP.No.23493 of 2014

VGI (CO)
CA(22/06/2015)



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