

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.4094 of 2014

ORDER:

Heard learned counsel for the petitioner and the learned counsel for the respondents and perused the material on record.

2. The present Writ Petition came to be filed seeking issuance of a Writ of Mandamus declaring the action of the 3rd respondent in issuing notice dated 24.06.2013 under Section 91 Cr.P.C., for seizure of articles in connection with Crime No.101 of 2013 of Pendurthi Police Station, as illegal, arbitrary and violative of Article 19 (1)(g) of the Constitution of India.

3. The averments in the affidavit filed in support of the Writ Petition are as under:

The petitioner is a Firm registered for carrying on finance business. It is stated that licence in Form-B was also obtained from the Sub-Collector, Rajahmundry. The main business of the petitioner appears to be lending money to the customers, by pledging of articles. While things stood thus, one Sri K. Girija Sankar Srinivas Yadav approached the petitioner on 24.11.2012, pledged gold articles, borrowed an amount of Rs.25 lakhs and is said to have executed necessary documents in proof thereof. The management of the petitioner received notice dated 06.05.2013 from the 3rd respondent herein stating that the said Sri Girija Sankar Srinivas Yadav cheated many people including the 4th respondent herein. It is stated that the 4th respondent lodged a report alleging that the said Sri Girija Sankar

Srinivas Yadav (accused) induced him to part with gold of 2.5 kgs., and cash of Rs.11 lakhs making him believe that he would perform *puja*. In respect of the same, a case in Cr.No.101 of 2013 came to be registered at Pendurthi Police Station, for the offence punishable under Section 420 IPC. During the course of investigation, it was found that the accused pledged gold ornaments with the petitioner and took hand loan of Rs.67 lakhs. The averments in the affidavit further show that the petitioner-firm addressed a letter dated 20.12.2003 to the 3rd respondent, stating that the accused in the said crime availed loan of Rs.25 lakhs by pledging gold articles weighing 1030 gms., under different heads. It was further stated that the accused availed financial assistance from Muthoot Finance Company, by pledging gold articles. While things stood thus, the 3rd respondent issued notice under Section 91 Cr.P.C., to the Branch Manager of the petitioner-firm, which was said to have been received in the last week of December, 2013. Challenging the issuance of the said notice, the present Writ Petition came to be filed.

4. By an order dated 13.02.2014, this Court, while admitting the Writ Petition, recorded that in terms of Section 91(1) read with sub-section (2) thereof, of Cr.P.C., as soon as the petitioner produces the gold ornaments pledged with it by the individual, the Police shall not seize the same. Subsequently, on 26.11.2015, this Court directed the petitioner to produce the said gold ornaments before the investigating officer within 10 days therefrom.

5. The learned counsel for the petitioner would mainly submit that though the Police are competent to issue notice under Section 91 Cr.P.C., but the gold ornaments cannot be subjected to seizure in Cr.No.101 of 2013, registered for the offence under Section 420 IPC. He would further submit that the petitioner has already produced the gold ornaments before the Police, pursuant to which the Police noted the same and gave them back to the petitioner.

6. A counter-affidavit came to be filed by the 3rd respondent-Inspector of Police, Pendurthy Police Station, disputing the averments made in the affidavit filed in support of the Writ Petition. According to him, a case in Cr.No.101 of 2013 of Pendurthy Police Station came to be registered on the basis of the report given by Sri Lakshmipathi Kishore Chand and, during the course of investigation, he recorded detailed statements of the witnesses and the informant. It is stated that during the course of investigation, it was noticed that the accused died in mysterious circumstances within the limits of II Town Police Station, Visakhapatnam City, upon which a case in Cr.No.142 of 2013 came to be registered under Section 174 Cr.P.C. It is stated that the accused cheated many people, purchased a house worth about Rs.40 lakhs and also deposited gold ornaments weighing about 1 ½ kgs., in different banks and took loan amounts. It is his case that these gold ornaments and cash were obtained by the accused from the complainant and others, promising to perform *Sri Chakra Puja* and utilized the same for his personal gains. Since these gold ornaments are property covered in the above said crime, a letter has been

addressed on 06.05.2013 requesting the petitioner to verify the records from its office to identify the person who pledged the gold ornaments in the office of the petitioner. The petitioner-firm was also requested to freeze the gold loan account of the accused or any account, which is standing in the name of the family members of the accused. It was further requested that the petitioner-firm shall not deliver the gold ornaments till the disposal of the criminal case. As there was no response to the said letter, the impugned notice came to be issued requesting the petitioner to produce the gold ornaments pledged with it by the accused. It is stated that instead of cooperating with the investigation, petitioner filed the present Writ Petition making baseless allegations. It has been specifically stated that unless the complainant-Sri Lakshmipathi Kishore identifies the gold ornaments pledged with the petitioner-firm in the presence of mediators, further investigation could not be taken against the petitioner. In view of the above, it is stated that the Writ Petition is without merits and the same is liable to be dismissed.

7. The 4th respondent herein filed his counter-affidavit disputing the nature of allegations made in the affidavit filed in support of the Writ Petition. It is his contention that the 1st respondent, who has power to investigate the case, has also got power to seize any article including the pledged gold ornaments, if the investigating officer feels that the said property relates to commission of offence and that it is necessary for proper adjudication of the matter. As the allegations made against the accused are grave and serious in nature and since

number of people are being cheated in the manner narrated above, the argument of the learned counsel for the petitioner, that the action of the respondents violates Article 19(1) (g) of the Constitution of India, cannot be accepted. In paragraph 8 of the counter-affidavit, it has been stated that notice has been issued for production of gold ornaments for the purpose of investigation, which may be subjected to seizure and that no seizure is effected till date.

8. Reiterating the averments made in the counter-affidavits, learned counsel for the respondents would submit that Police have got power to seize the gold ornaments which are in the custody of the petitioner and which are the subject matter of the above said crime.

9. In order to appreciate the rival contentions, it would be necessary to refer to Section 91 Cr.P.C., which reads as under:

“Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such

document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

10. A reading of Section 91 Cr.P.C., shows that any document or thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is necessary or desirable for the purpose of investigation, inquiry, trial or other proceeding under the Code. If the document/thing is found to be necessary and desirable for the purpose of proceeding further with the investigation, the Police Officer can summon production of the document as may be necessary in any of the circumstances mentioned in the section. Therefore, the preliminary objection taken with regard to the very issue of summons, cannot be accepted for the reason that during the course of investigation, it was found that certain gold ornaments, which were the subject of Cr.No.101 of 2013, are being mortgaged with the petitioner-firm. Therefore, those articles are very much necessary for the purpose of proceeding further with the investigation. Since the same are essential, Police issued notice under Section 91 Cr.P.C., for production of the gold ornaments that were pledged by the accused. Though the gold ornaments are liable to be seized in the crime, but, that, by itself, does not mean that Police can do so under the guise of

this notice. A plain reading of the provision under Section 91 Cr.P.C., clearly shows that it is intended only for production of any document or thing, which is necessary for the purpose of any investigation, inquiry, trial or other proceeding at the time and place stated in the summons or order. Therefore, the question of seizure of the gold ornaments may not arise at this stage. But, however, at the same time, it cannot be said that the Police have no power to seize the gold ornaments under the provisions of the Code, since the same is subject matter of the crime in question. The Police have to adopt a different procedure altogether for effecting seizure of the gold ornaments, if they feel that the same are required.

11. Having regard to the above and in view of the fact that the gold ornaments have already been produced before the Police, the very issuance of notice for production of gold ornaments cannot be found fault with. It is always open to the respondents-Police to continue the investigation and if they feel that custody/seizure of the gold ornaments are essential, they may do so in accordance with the provisions of Cr.P.C.

12. The Writ Petition is accordingly disposed of.

As a sequel, miscellaneous petitions pending, if any, stand closed.

C. PRAVEEN KUMAR, J

February 23, 2017
MRR