

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.10.2018

PRONOUNCED ON : 24 .10.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.21723 of 2018

P.Gopalakrishnan

... Petitioner

Vs.

State by

1.The Superintendent of Police
Villupuram District, Villupuram.

2.The Inspector of Police
Chinna Salem Police Station
Chinna Salem
Villupuram District.

3.M/s Axis Bank Ltd.
Rep. by its Authorised Signatory
Retail Asset Centre
Kodambakkam Branch
Chennai 24.

4.A.Sivakami
5.K.Ganesan
6.S.Manivel
7.K.Elayaraj
8.S.Vairam
9.C.Periyasamy
10.K.Mookan
11.K.Umaidurai

... Respondents

R3 impleaded as per order in CrI.Mp.12290/2018 dated 14/09/18

R4 impleaded as per order in CrI.Mp.12165/18 dated 14/09/2018

Prayer:- Petition filed under Section 482 Cr.P.C., to issue suitable directions to the respondent police to give adequate police protection to the petitioner and bank officials for taking delivery of the Groundnut Kernels from the Somasundaram Godown, Kattukottai, Pusappadi, Melnariyappanur Post, Chinna Salem 606 201, Somasundaram Godown, Kattukottai, Pusappadi, Melnariyappanur Post, Chinna Salem 606 201, Shanmugam Godown

No.2, Siruvathur Road, Pethanur Annamalai Godown, Rayarpalayam, Mel Nariyappanur Post, Chinna Salem 606 201, Kumar Godown, Moongalpadi Road, Chinna Salem, Srinivasan Godown, Koot Road, Chinna Salem, Rajendran Godown, Kattukottai, Thottapadi.

For Petitioner : Mr.C.Prakasam
For R1 and R2 : Ms.M.Prabhavathi
Additional Public Prosecutor
For R3 : Mr.M.R.Uma Vijayan
For R4 to R11 : Mr.Om Prakash
Senior Counsel
for Mr.Vijay Ganesh

O R D E R

This petition has been filed to issue suitable directions to the respondent police to give adequate police protection to the petitioner and bank officials for taking delivery of the Groundnut Kernels from the godowns.

2. The facts of the case are as under:

There are 8 borrowers in this case who had taken a total loan of Rs.4 crores for the period from 2016-17 and had hypothecated goods with Axis Bank. These 8 borrowers had acquired groundnut with shell and the loan sanctioned by the Axis Bank is termed as "Commodity loan". To put it in simple terms, the borrowers acquire the groundnut and store it in a godown until the commodity fetches good price. For acquiring the commodity, they obtain loan from the Bank. They bring the commodity to sale after the price soars and thereby return the loan to the Bank with interest. Under such a Scheme, the commodities were hypothecated with Axis Bank and were kept in various godowns. Unfortunately, the prices did not soar and therefore, the borrowers were not able to sell the commodity beyond the loan amount payable to the Bank. However, as per the agreement between the borrowers and the Bank, if the payment is not made, the Bank has a lien over the commodity and can sell the same in public auction. Since the total outstanding was Rs.3.28 crores vis-a-vis the 8 borrowers, Axis Bank issued an auction notice dated 22.04.2018 calling for bids from purchasers. The upset price was fixed, but there were no takers for the price fixed. Therefore, the commodities were sold in private auction to the petitioner herein and the petitioner was issued with successful Bidders Advice dated 31.08.2018 for the bid price of Rs.1.07 crore, which, the petitioner has paid to Axis Bank. Armed with the Bidders Advice, when the petitioner went to take possession of the commodity, it is alleged that the borrowers physically prevented him and the petitioner was threatened by local politicians and their goondas. Under such circumstances, the petitioner gave a representation to the

police and has thereafter, filed this petition for police protection for taking possession of the commodity.

3. Notice was ordered to all the parties.

4. Mr.Om Prakash, learned Senior Counsel for borrowers picked holes in the auction notice issued by Axis Bank and stated that the Bank had not adopted a transparent process while auctioning the commodity. He brought to the notice of this Court the loan account of one Chitra and submitted that in the auction notice dated 22.04.2018, the total number of bags to her credit were 940 and the loan amount due from her was fixed at Rs.45,51,658.98 and the upset price was fixed Rs.40,41,000/-, whereas, the commodity has been sold for a song to the petitioner herein. He also contended that after the auction, the Bank has issued a notice dated 04.09.2018 to Chitra claiming Rs.48,13,243/-. Therefore, he submitted that the entire transaction is bristled with suspicious features and therefore, this Court should not come to the aid of the petitioner and provide police protection. He also contended that the borrowers have filed writ petition in W.P.No.25207 of 2018 challenging the auction procedure adopted by the Bank and the same is pending, but, of course no interim orders have been granted by this Court.

5. Explaining the stand of Axis Bank, Mr.M.R. Uma Vijayan submitted that the total outstanding from the borrowers amount to Rs.3.28 crores and the Bank issued an auction notice dated 22.04.2018, in which, the upset price was fixed based on the amount of loan due from the borrowers, however, there were no takers as the commodity did not fetch the desired price. Hence, the Bank had no other option, but to sell the commodity in a private auction, in which, the petitioner participated and offered a bidding price of Rs.1.07 crores. The learned counsel for Axis Bank further submitted that the notice dated 04.09.2018 was issued to Chitra and other borrowers only in respect of the shortfall amount, because the auction did not fetch the expected price.

6. Mr.C.Prakasam, learned counsel for the petitioner company submitted that the borrowers are not farmers and they are rank hoarders inasmuch as they acquired the groundnut from the farmers without even making them payment and obtained loan from Axis Bank by hypothecating the commodity and thereafter, they created artificial scarcity in the market for the price to soar and sell the groundnut when the price stock rockets and thus earn huge profits. Unfortunately, for them, this time, the groundnut production was so extensive that their plan failed and therefore, they are indebted to the Bank.

7. Mr.Om Prakash denied this insinuation and submitted otherwise. Be that as it may, the fact remains that the

petitioner is a successful bidder and he will be entitled to possession of the groundnut. The infirmity in the auction notice cannot be a subject matter of adjudication in a petition under Section 482 Cr.P.C. The fact remains that till date, the borrowers have not discharged the outstanding amounts to the Bank and the interest is increasing day by day.

8. Learned counsel for the Bank made certain offers to the borrowers after holding discussions with the Board and have agreed to waive substantial interest and principal. It is for the borrowers to accept or reject this offer.

9. Yesterday (23.10.2018), Mr.C.Prakasam, learned counsel for the petitioner and Mr.M.R.Uma Vijayan, learned counsel for Axis Bank made a special mention before this Court that respondents 4 to 11 have broken the doors of the godown and are brazenly shifting the groundnut stocks in lorries. They submitted the videos sent by WhatsApp by the Bank officials from the place of occurrence. They contended that when the Bank officials approached the police for help, the police did not heed to their request. Therefore, this Court directed the learned Additional Public Prosecutor to inform the District Superintendent of Police, Villupuram and the Inspector of Police, Chinna Salem Police Station to immediately intervene and take preventive action. At 4.30 p.m., the learned Additional Public Prosecutor reported to this Court that instructions have been issued to the police and the police are now in control of the situation. This illegal conduct of respondents 4 to 11 lends credence to the case of the petitioner and is, by itself, a good reason for this Court to direct the police to afford necessary protection as prayed for by the petitioner.

10. As submitted by Mr.C.Prakasam, politicians and goondas cannot be permitted to rule the roost and prevent the successful bidder from taking lawful custody of the purchased goods. Therefore, this Court directs the Superintendent of Police to ensure that sufficient police protection is given to the petitioner to take possession of the goods covered by the Bidders Advice and ensure that there is no interference by any politician or goondas. Enough police or enforcement shall be made available to ensure that the petitioner lifts the stock covered under the Bidders Advice.

Accordingly, this petition is ordered in the above terms.

24.10.2018

Today, after the pronouncement of the order, Mr.N.Ramanathan, Deputy Superintendent of Police, Kallakurichi Sub Division and Mr.P.Shanmugam, Inspector of Police, Chinna Salem, were present.

2. On instructions, learned Additional Public Prosecutor submitted that 1,800 groundnut bags have been removed from the godown by the borrowers with the aid of the Manager of Lakshmi Vilas Bank and they have transported the same to another godown, which, in the opinion of this Court, is a clear abuse of process of law.

3. Mr.A.Arun Babu, learned counsel intervened on behalf of Lakshmi Vilas Bank and submitted that it is only Lakshmi Vilas Bank which has the first charge over the commodity and therefore, they had removed the groundnut bags.

4. On the contrary, learned Additional Public Prosecutor submitted that the borrowers have shown the same stock to both Lakshmi Vilas Bank and Axis Bank and they have raised two different loans.

5. The fact remains that when this Court is seized of the matter, the police ought not to have allowed anybody to touch the commodity. Therefore, this Court directs the police to ensure that the 1,800 groundnut bags are brought back to the godown and status quo ante is restored.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Superintendent of Police
Villupuram District, Villupuram.

2.The Inspector of Police
Chinna Salem Police Station
Chinna Salem
Villupuram District.

3.The Public Prosecutor
High Court, Madras.

+1cc to Mr.M.R.Uma Vijayan, Advocate sr.no.72458
+1cc to Mr.Vijay ganesh, Advocate sr.no.72264
+4cc to Mr.C.Prakasam, Advocate sr.no.72344

Cr1.O.P.No.21723 of 2018

nr 24/10/2018