BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.(MD).No.17036 of 2018
and
W.M.P.(MD).No.15010 of 2018

K.Tamilselvan ... Petitioner

Vs.

1. The General Manager,
   Indian Overseas Bank,
   Central Office, 763, Anna Salai,
   Chennai-600 002.

2. The Regional Manager,
   Indian Overseas Bank,
   Regional Office, 131, East Car street,
   Thirunelveli-627 006.

3. The Branch Manager,
   Indian Overseas Bank,
   Karivalamvanthanallur-627753,
   Thirunelveli District.

4. The Superintendent of Police,
   District Police Office,
   Palayamkottai, Tirunelveli 627 002

5. The Inspector of Police,
   Karivalamvanthanallur Police Station,
   Karivalamvanthanallur, Thirunelveli District.

6. P.M.Associates,
   Recovery Agent, Palayamkottai, Tirunelveli-627002.

7. The Deputy Superintendent of Police,
   CBCID, Perumalpuram,
   Tirunelveli. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the fourth and fifth respondents to hand over the investigation to CBCID in Crime No.92 of 2018 dated 13.03.2018 pending on the file of the fifth respondent.

For Petitioner : Mr.S.Radhakrishnan
For R1 & R2 : Ms.B.Bhagawathi
Government Advocate
For R3 : Mr.Palaramasamy

ORDER

This Writ Petition has been filed for a direction to transfer the investigation from the file of the fifth respondent to some other agency.

2.The case of the petitioner is that he purchased a Toyata Innova Car with a subsidy, that was extended by THADCO, Tirunelveli, by availing the loan from the third respondent Bank. The loan amount was disbursed under the Credit Guarantee Scheme for Micro and Small Enterprises on 30.08.2013, with a condition to repay the amount by 84 equal monthly instalments of Rs.16,884/- per month. After purchasing the car, the petitioner was using the car as a Tourist taxi and eking his livelihood. The further case of the petitioner is that he was properly paying the instalments and during April 2015, he met with an accident and he was not in a position to drive the car and therefore, he was not in a position to pay the instalments. In the meantime, the third respondent Bank had approached the Debt Recovery Tribunal, Madurai and filed a Petition in O.A.No.1484 of 2015, for the recovery of the amount and the petitioner was also contesting the same. There was also an one time settlement proposal issued by the third respondent Bank on 16.02.2018.

3.It is the further case of the petitioner that on 23.02.2018, this car was engaged by one Muthusamy, who is an L.I.C Agent and the said Muthusamy had got into the car with an amount of Rs.2,46,500/- (Rupees Two Lakhs and Forty Six Thousand and Five Hundred only) which, he had collected from various persons towards L.I.C Premium. The petitioner had parked his car and left for lunch along with the said Muthusamy. When he returned back, he was informed that some persons have taken away the car. Therefore, the petitioner gave a complaint before the fifth respondent Police. The petitioner had come to know that the third respondent Bank had seized the vehicle with the help of the sixth respondent, who is the Recovery Agent. The fifth respondent Police did not immediately register the First Information Report and after lot of persuasion, the fifth respondent registered the First Information Report in Crime No.92 of 2018, on 13.03.2018, for an offence under Section 379 I.P.C against four unknown persons.

4.The learned counsel appearing for the petitioner would submit that when the case is pending before the Debt Recovery Tribunal and the one time settlement proposal was also given by the third respondent Bank, the third respondent Bank did not have a right to seize the car. He would further submit that the petitioner should have been put on notice before the seizure that was made by the sixth respondent, who is the Recovery Agent of the third respondent Bank. That apart, the cash of Rs.2,46,500/- (Rupees Two Lakhs Forty Six Thousand and Five Hundred only) and also certain gold articles and documents pertaining to the car were kept inside the car and it was never returned back to the petitioner. He would further submit that the seizure made by the third respondent Bank is totally illegal and the fifth respondent, who in spite of registering the First Information Report, has not proceeded further to investigate the case. Therefore, the investigation has to be transferred to the file of the CBCID.

5.The fifth respondent has filed a counter affidavit in this case. In the counter affidavit, it has been stated that the third respondent Bank had filed a suit and the same in pending in O.A.No.1484 of 2015, before the Debt Recovery Tribunal, Madurai. It is further stated in the counter affidavit that the fifth respondent had investigated the case and examined nearly 21 witnesses. who have been named in the affidavit. On investigation, the fifth respondent was not able to find any offence committed and therefore, he filed a referred charge sheet.

6.The learned counsel appearing for the Bank would submit that admittedly the car was taken on hypothecation. Therefore, the Bank is entitled to re-possess the vehicle when the instalments are not paid properly since the ownership of the car remains with the Bank. In this case, the Bank has re-possessed the car through its agent, who is the sixth respondent. Therefore, the learned counsel would submit that the petitioner, without repaying the money has filed a false complaint and therefore, there are no merits in the Writ Petition.

7.Admittedly, in this case, the petitioner has purchased the car by way of hypothecation, by taking a loan from the third respondent bank. It is beyond cavil that in the case of hypothecation, the financier continues to be the owner of the property till the last instalment is paid. The petitioner had stopped making payment of the instalment from the year 2015 and therefore, the third respondent Bank had initiated proceedings before the Debt Recovery Tribunal, Madurai in O.A.No.1484 of 2015 and the same is pending before the DRT, Madurai. It is true that the bank had offered the one time settlement on 16.02.2018. However, the petitioner has not availed the one time settlement.

8.The submissions made by the learned counsel appearing for the petitioner that the Bank should have given prior notice before seizing the vehicle, is a process which is un-known to law. If notice is given before hand, no seizure can takes place and none of the financiers will be able to re-possess the vehicle.

9.Insofar as the amount that is owned to the Bank by the petitioner, the same is pending before the DRT, Madurai, in

O.A.No.1484 of 2015, Madurai. Therefore, the petitioner has to necessarily fight the said case only before the Debt Recovery Tribunal. In the meantime, the Bank has re-possessed the vehicle in its capacity as a financier and therefore there is nothing illegal about the said act. The same in the considered view of this Court will not amount to theft. Insofar as the submissions made by the petitioner with regard to money and other articles kept inside the car, the fifth respondent has investigated the case and he has examined nearly 21 witnesses and the fifth respondent was not able to find any money or articles that were taken away from the car. The fifth respondent has also filed a Referred Charge Sheet in this case.

10.For all the reasons stated above, this Court does not find any reasons to transfer this case to any other agency. At the best, the petitioner is given a liberty to work out his remedy by filing a protest petition before the Court below, after a closure report is filed by the fifth respondent Police.

11.The Writ Petition is dismissed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-)

To

1.The Superintendent of Police,
District Police Office,
Palayamkottai, Tirunelveli – 627 002

2.The Deputy Superintendent of Police,
CBCID, Perumalpuram, Tirunelveli.

3.The Inspector of Police,
Karivalamvanthanallur Police Station,
Karivalamvanthanallur,
Thirunelveli District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 81764
+ 1 CC TO Mr.PALARAMASAMY, ADVOCATE IN SR No. 81513
+ 1 CC TO Mr.S.RADHAKRISHNAN, ADVOCATE IN SR No. 81444

TSG
TE/SKN/SAR-2 : 28/09/2018 : 4P/6C