

THE HON'BLE JUSTICE SRI GUDISEVA SHYAM PRASAD

WRIT PETITION No. 144 of 2016

ORDER :

The petitioner has sought for a writ in the nature of Writ of Mandamus to declare the action of the respondent Nos.4 and 5, in interfering with the day to day business activities of the petitioner Company and in seizure of gold ornaments, loan documents belonging to the customers on 31.12.2015 and trying to stop the auction of gold ornaments for recovery of loan outstanding dues scheduled to be held on 14.01.2016, under the guise of the crime registered in FIR No. 143/2015 of I Town Police Station, Chittoor, and in directing the petitioner company to hand over the gold ornaments belonging to *de facto* complainant Smt. T. Jyosna as illegal, arbitrary and unconstitutional.

2. Brief facts of the case are that the petitioner is a Finance Company – Muthoot Finance Limited, represented by its Branch Manager Sri S.Siva Sankara Reddy. The petitioner is doing finance business, including granting loans to the customers on pledging their gold ornaments. The petitioner has got franchise across the country. Recently, the petitioner has opened a new branch at Church Road, Chittoor. The petitioner, at its newly opened branch at Chittoor, has sanctioned a gold loan to Sri Charan Kumar and his wife K.Pavani, who are residents of Chittoor, after completion of the prescribed procedure. An amount of Rs.10,67,700/- was sanctioned to the said Charan

Kumar and an amount of Rs. 5,88,000/- was sanctioned to K.Pavani, during the period from 2013 to 2015. Since, all the accounts have become irregular, the petitioner company has proceeded to auction the ornaments as per the procedure prescribed by the petitioner company. Accordingly, the petitioner company has issued gold auction notice dated 26.12.2015, calling upon the public to participate in that auction, scheduled to be held on 14.01.2015 at 10 a.m. in the office of the petitioner Company. On 31.12.2015, the respondent No.4 and 5, who are police officials, came to the Branch office of the petitioner company at Chittoor and terrorised the staff with highhandedness and misbehaved with them.

3. The respondents have not issued any notice to the petitioner company under section 91 Cr.P.C. It is the further case of the petitioner that Charan Kumar and Pavani, who are arrayed as accused in the complaint lodged by the *de facto* complainant, to the police and the police registered the complaint as case in Crime No. 143 of 2015 of P.S., I Town, Chittoor for the offences punishable under Section 420, 384, 109 read with 34 IPC on 30.12.2015 at 4 P.M. On registering the said complaint, the respondent Nos. 4 and 5, without verifying the truth and genuineness of the complained allegation, highhandedly entered into the office of the petitioner company on 31.12.2015 and seized gold ornaments relating to Charan Kumar and his wife K.Pavan, in respect of loan account Nos. MAL 714, MAL 715, MAL 772, LMA 29, LMA 118, LMA 114,

MAL 762, MAL 855, MAL 852 along with the documents, without any order from any competent Court.

4. It is further case of the petitioner that when the petitioner company staff asked about the high handedness of the respondent Nos. 4 and 5, they have served notice under section 91 Cr.P.C. dated 31.12.2015, pertaining to the crime No. 143 of 2015 of I Town Police Station, Chittoor.

5. The learned counsel for the petitioner submits that one T.P. Jyoshna, wife of T.M. Praveen Kumar has lodged a complaint before the police against K.Pavani wife of Charan Kumar. The brief facts of the complaint are that the Accused No.3- Pavani and Accused No.4 - Charan Kumar, husband of A3, requested the complainant- Jyothsna wife of T.M. Praveen Kumar for a monetary help, due to their financial crises. The complainant gave her gold jewellery, weighing about 406 grams to Accused No.3 and Accused No.4 and in turn Accused No.3 and 4 pledged the same with petitioner company - Muthoot Finance Limited and availed gold loan for an amount of Rs.6,70,000/- Later the Accused No.3 and 4 failed to release and return the gold jewellery to the complainant. In spite of several requests and demands from the complainant, the Accused Nos.3 & 4, intentionally avoided to release the gold ornaments with an intention of cheating and subsequently the complainant approached the Accused No.1 for settling the issue. The complainant was asked by the Accused No.2 - Haridas, working under Accused No.1 - Chandrasekhar @ Chintu, to

come to the office of Chintu, where the Accused No.3 placed all receipts issued by the Muthoot Finance Limited and also cash of Rs. 5,00,000/- before Accused No.1 and requested him to settle the issue. The Accused No.1 settled the issue and informed the complainant that she should not have any connection with Accused No.3 and 4 and in case if she fails to comply with his directions, he will do away her along with her family. The contents of the complaint reveal that the complainant gave her ornaments to Pavani as she was in need of money and the said Pavani pledged the ornaments with Muthoot Finance Company. The accused sought the help Accused No.4 and he threatened the complainant and therefore, the complainant lodged a complaint against the Accused No.1 and 2. The police registered a case in Crime No. 143/2015 dated 30.12.2015 under section 420, 384 and 109 of IPC read with 34 IPC. During the part of investigation, the police have issued a notice under Section 91 of Cr.P.C., requiring the petitioner- Muthoot Finance Limited to produce the 8 items of property shown in the notice, which were in the custody of the petitioner.

6. It is further stated in the notice that the property is the proceeds of crime and is connected to the offences under section 420, 384 and 109 read with 34 IPC and therefore, they intend to seize the ornaments for the purpose of investigation. The petitioner has produced the ornaments before the police and they have seized the ornaments under seizer proceeding dated 31.12.2015 from the Muthoot Finance Limited in the presence of the punch witnesses. The police have completed the

investigation and filed a charge sheet on 15.11.2016, before the IV Additional Judicial Magistrate First Class Chittoor along with the list of property seized from the possession of the petitioner under CPR No.149/2016 dated 28.07.2016. Now the property is lying in the Court of IV Additional Judicial Magistrate of I Class, Chittoor.

7. The learned Government Pleader (Home) submits that since the property seized under Section 102 Cr.P.C. as it is connected in respect of the Commissioner of the Offences registered against the accused, the petitioner company is not entitled to seek return of the property from the Police. It is submitted that the property lying with the Court and the petitioner company may approach the Court and take return of the property, by following due procedure.

8. It is pertinent to note that the petitioner company - Muthoot Finance Limited appears to have no connection with this crime except granting loan by mortgaging the property from the accused. The Muthoot Finance Limited is not an accused in the crime. It is a Finance Company, doing finance business by granting loans to the people, when they pledge their gold with the finance company. They have bye laws and procedure for sanction of loan. The petitioner has sanctioned the loan to the accused No.3 and 4 in this case. The accused No. 3 and 4 alleged to have cheated the *de facto* Complainant and therefore, she lodged a complaint before the police and after investigation they have filed charge sheet before the Court along with the

property seized from the possession of the petitioner. The petitioner company, since not a party to the proceedings, it can take return of the property from the Court by following due process of law.

9. The learned counsel for the petitioner submits that since the petitioner company - Muthoot Finance Ltd. is no way connected with the facts, the seizure of the property from it is not in accordance with law and therefore, the petitioner is entitled for return of the property from the Court.

10. It is further submitted that the petitioner is neither a receiver of stolen goods nor involved in any offence even as per the contents of the FIR lodged by the Complainant. There are no allegations against the petitioner and therefore, the petitioner is entitled for return of the ornaments. It is the case of the petitioner that the respondent Nos. 4 and 5 are interfering with the day to day business of the petitioner and have highhandedly seized the gold ornaments pledged by Charan Kumar and Pavani does not appear to be proved. The reasons are being that the said property is seized by following the issuance of notice under section 91 Cr.P.C. and seizer proceedings conducted in the presence of the Punch by the concerned police officials.

11. It is also pertinent to note that the petitioner has stated in his affidavit that the petitioner company is taking steps to file a petition under Section 457 Cr.P.C. before the concerned court for return of the said gold articles seized by respondent Nos. 4 and 5 under seizer punchanama dated 31.12.2015.

12. According to the petitioner the said seizer is illegal and highhanded, therefore, the petitioner has sought directions to the respondents for return of the property.

13. The respondents are the police officials. Respondent No. 4 and 5, during the investigation, have seized the gold ornaments and produced before the concerned Court. As rightly stated by petitioner in the affidavit, he may move an application before the trial Court under section 457 Cr.P.C., for taking back the gold ornaments from the Court.

14. In view of the foregoing reasons, the Writ Petition is disposed of giving liberty to the petitioner company - Muthoot Finance Limited to file a petition before the Trial Court for taking return of the property seized by the respondent Nos. 4 and 5, as per Section 457 of Cr.P.C.

15. The Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

GUDISEVA SHYAM PRASAD,J

Dated: 02.05.2018

JR

THE HON'BLE JUSTICE SRI GUDISEVA SHYAM PRASAD



CRIMINAL PETITION No. 144 of 2016

Dated: 02.05.2018

JR*