IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

Crl.O.P.No.5870 of 2016

HDFC Bank Limited
Rep.by its Authorised Signatory,
Mr.BharathSundaram
No.110 Nelson Manickam Road,
4th Floor, Ceebros Building
Aminjikarai, Chennai-600 029 .. Petitioner/3rd Party

Vs.

1.State of Tamilnadu
Rep.by the Inspector of Police,
E.O.W.II, Vellore ..1st Respondent/Complainant

2.D.Sadeeshkumar ..2nd Respondent/Accused

Prayer:Criminal Original Petition filed under Section 482 of Criminal Procedure Code, against the Order dated 07.01.2016 on the file of the Learned Special Judge TNPID ACT, Chennai, passed in CRL.M.P.No.1564 of 2015 in CRIME.NO.1 of 2014.

For Petitioner : Mr.T.K.M.Sai Krishnan

For R1 : Mr.B.Arul Mozhi Maran,
Govt. Advocate (Crl. Side)

For R2 : No appearance.

ORDER

This petition has been filed to modify the condition Nos.1, 5 and 6 imposed in the order dated 07.01.2016 passed in CRL.M.P.No.1564 of 2015 in Crime No.1 of 2014 on the file of the Special Judge under TNPID ACT, Chennai.

2.The first respondent herein had registered a case in Crime.No.1 of 2014 under Section 5 of the TNPID Act and Sections 120-B, 420 & 506(i) of IPC against the second respondent herein and three others.

3.In the course of the investigation, the first respondent had seized a car, MERCEDES C 200 AVANTGRADE BE, bearing Registration No.TN.23 BF 0005, from the second respondent and produced the same before the Special Court constituted under the TNPID Act, Chennai.

4.The petitioner herein had filed a petition under Section 451 of Cr.P.C in Crl.M.P.No.1564 of 2015, seeking custody of the said car. The learned Special Judge under TNPID Act, Chennai, by the order dated 07.01.2016, had allowed the said petition by imposing certain conditions. The operative portion of the said order is as follows:

> "16.In the result, this petition is allowed and the case property is ordered to be returned to the petitioner for interim custody subjected to the following conditions:
>
> 1.The petitioner Mr.Barath Sundaram, shall personally appear in the court and execute a bond for a sum of Rs.25,00,000/- with two sureties each for like sum on behalf of the petitioner bank;
>
> 2.The photo copy of the Registration Certificate shall be furnished in the Court;
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> 3.The original authorisation letter shall be produced for verification;
>
> 4.The petitioner shall take the photograph of all the sides of the case property and produce the photographs in this court after return of the case property within a week;
>
> 5.The petitioner shall give an undertaking on behalf petitioner Bank that it would not sell or mortgage or alter the physical features of the vehicle in any manner;
>
> 6.The petitioner Bank shall produce the case property as and when it required."

5.Aggrieved by the imposing of condition Nos.1, 5 and 6, the petitioner has filed the present petition under Section 482 Cr.P.C to modify the said conditions and allow the petitioner to take possession and sell the vehicle under public auction and credit the sale proceeds in the loan account No.21813640.

6.Heard Mr.T.K.M.Sai Krishnan, learned counsel appearing for the petitioner and Mr.B.Arul Mozhi Maran, Govt. Advocate (Crl. Side) learned Additional Public Prosecutor appearing for the first respondent.

7.The learned counsel for the petitioner has submitted that the second respondent had approached the petitioner Bank seeking for an Auto Premium loan and submitted requisite documents and in pursuance of the same, the petitioner bank granted a loan for a sum of Rs.24,81,438/- to the second respondent herein, under the terms and conditions of Written Loan Agreement dated 05.07.2012.

8.The learned counsel for the petitioner has further submitted that the said loan was disbursed to the second respondent for the purchase of MERCEDES C 200 AVANTGRADE BE car bearing Registration No.TN.23 BF 0005, towards loan account No.21813640. He further submitted that the said loan is a secured loan and the second respondent had executed a loan Agreement and also Demand Promissory Note. He further submitted that as per the said Loan Agreement, the second respondent has agreed to repay the aforesaid loan amount in 60 Equated Monthly Installments (EMIs) carrying a sum of Rs.53,462/- per month, starting from 07.08.2012 to 07.06.2017. He further submitted that the second respondent has paid EMI from 07.08.2012 to 07.08.2013 and thereafter he failed to pay the EMIs for several months. Hence, the petitioner had sent a legal notice dated 17.06.2014, recalling the loan facility and the said notice was returned with an endorsement "Left" on 21.06.2014.

9. The learned counsel for the petition has further submitted that the petitioner bank filed a O.A.No.975 of 2014 before the Debts Recovery Tribunal, Chennai, for recovery of a sum of Rs.22,95,354/- and also filed an application in I.A.No.802 of 2014 to appoint an Advocate Commissioner to repossess the vehicle. He further submitted that the Debts Recovery Tribunal has allowed the said Interlocutory Application on 24.07.2015 and appointed an Advocate Commissioner for repossessing the vehicle, but in the meanwhile, the first respondent had seized the said vehicle and produced before the Special Judge under TNPID Act, Chennai.

10.The learned counsel for the petitioner has further submitted that as per the Hypothecation Agreement executed between the petitioner bank and the second respondent dated 05.07.2012, the petitioner bank is having right of first charge over the said car. Further, the petitioner is the owner/title holder of the said vehicle and hence, the petitioner bank has filed CRL.M.P.No.1564 of 2015, before the Special Judge under TNPID Act, to return the said vehicle to sell the same. He further submitted that the learned Special Judge under the TNPID Act, though passed an order to return the said vehicle to the petitioner, however, he imposed a condition that the petitioner should execute a bond for a sum of Rs.25,00,000/- with two sureties each for like sum and also directed the petitioner to give an undertaking that the vehicle would not sell or mortgage or alter the physical features of the vehicle in any manner and also produce the same before the Court whenever required. He further submitted that since the petitioner is having priority over the said vehicle as per the SARFAESI Act, the petitioner bank is entitled to sell the car for realising its dues from the second respondent and in such a case, the petitioner cannot comply with the aforesaid conditions imposed by the Special Judge under TNPID Act. He further submitted that if the vehicle is kept in idle till the disposal of the case which is pending before the Special Judge TNPID Act, naturally it would get deteriorated and value of the vehicle will be diminished and it would cause loss to the petitioner bank and therefore, he prayed to modify the aforesaid conditions and allow the petitioner bank to sell the said vehicle in public auction and credit the sale proceedings in the loan account No.21813640.

11.Per contra, the learned Government Advocate, (Criminal Side), who is appearing for the first respondent has submitted that the second respondent and three others had collected Rs.13,79,01,34/- from the public by giving false promise that they will pay 10% interest per month and subsequently, they did not repay the amount to the depositors and hence, a compliant has been received by the first respondent. He further submitted that based on the said complaint, the first respondent had registered a case in Crime.No.1 of 2014 under Section 5 of the TNPID Act and Sections 120-B, 420 & 506(i) of IPC against the second respondent herein and three others.

12. The learned Government Advocate (Criminal Side) has further submitted that during investigation, the first respondent has arrested the second respondent and he was enquired with regard to the aforesaid offence. He further submitted that the second respondent gave a confession, stating that from and out of the amounts collected by him from the depositors, he paid a sum of Rs.8,00,000/- to the petitioner bank as marginal amount for obtaining vehicle loan. He also stated that after obtaining loan from the petitioner bank he had purchased a MERCEDES C 200 AVANTGRADE BE car bearing Registration No.TN.23 BF 0005, towards Loan account No.21813640. Subsequently, he paid EMIs to the tune of Rs.7,70,440/- and the said amount also paid only out of the amount collected from the depositors and only on that basis the said car was seized by the first respondent and produced before the Special Judge under TNPID Act. He further submitted that after completing investigation, charge sheet has been filed and based on the said charge sheet, the learned Special Judge under TNPID Act, Chennai, has taken the case on file in C.C.No.2 of 2017 and the said case is pending for trial. He further submitted that under the said circumstances, if the petitioner is permitted to sell the said vehicle that it would affect the case of the

prosecution and therefore, he prayed to dismiss the petition.

13.It is seen from the typed set of papers, the second respondent had purchased a MERCEDES C 200 AVANTGRADE BE car bearing Registration No.TN.23 BF 0005, by availing loan of Rs.24,81,438/- from the petitioner bank and also executed an Agreement for Auto Loan. As per the said agreement, the second respondent has to repay the loan amount with interest in 60 EMIs starting from 07.07.2012 to 07.06.2017 at the rate of Rs.53,462/- per month. Further in clause 14.2 of the said agreement, it is stated that in the event of default in paying the instalments, the bank is entitled to seize the said vehicle. It is also stated that the bank is having right to exercise all or any of its rights under the said agreement.

14.According to the petitioner, the second respondent had paid EMIs only up to 07.08.2013 and thereafter he failed to pay the EMIs for the remaining period and hence, the petitioner bank has filed O.A.No.975 of 2014 before the Debts Recovery Tribunal, Chennai, for recovery of Rs.22,95,354.19/- and also filed a I.A.No.802 of 2014 to appoint an Advocate Commissioner to seize and repossess the vehicle and accordingly, the Debts Recovery Tribunal has allowed the said Interlocutory Application and appointed an Advocate Commissioner to repossess the vehicle, but the Advocate Commissioner has reported that already the first respondent had seized the vehicle and hence he could not repossess the vehicle.

15.Further, according to the petitioner as per Section 2(n) of SARFAESI Act 2002, the petitioner being a secured creditor, it is having priority right and charge over the said vehicle and that being so the first respondent is not entitled to seize the vehicle. However, considering the fact that a criminal case has been filed against borrower and the same is pending before the Special Court Constituted under the TNPID Act, and the petitioner itself has filed a petition only under Section 451 Cr.P.C., and the said provision is meant for granting only interim custody and also the fact that if the vehicle is kept in idle, it would deteriorated and its value will be diminished, this Court is of the view that the petitioner can be permitted to sell the vehicle, but it cannot be permitted to credit the sale proceedings in the loan account. The petitioner can sell the vehicle in public auction and deposit the said amount either in the petitioner bank or in any other bank and produce the fixed deposit receipt before the learned Special Judge under TNPID Act. It is for the learned Special Judge under TNPID Act to pass final order with regard to the aforesaid amount at the time of disposal of the Criminal Case which is pending in C.C.No.2 of 2017.

16. In the result, the Special Judge under TNPID Act, Chennai is directed to return the MERCEDES C 200 AVANTGRADE BE car bearing Registration No.TN 23 BF 0005 to the petitioner Bank with the following conditions:-

i) That the petitioner shall execute a bond for a sum of Rs.25,00,000/- by giving undertaking that it will sell the aforesaid vehicle by public auction and deposit the sale proceeds either in the petitioner Bank itself or in any other Bank initially for a period of one year and renewable periodically till the disposal of the criminal case and produce the original Fixed Deposit receipt within two months from the date of return of the said vehicle;

ii) that the petitioner shall produce a xerox copy of the R.C to the said vehicle;

iii) that the petitioner shall take photographs on all sides of the said vehicle and produce the same at the time of producing the Fixed Deposit Receipt; and

iv) that the petitioner shall execute the bond as aforesaid within ten days from the date of receipt of a copy of this order.

It is for the learned Special Judge under TNPID Act, Chennai to pass final order with regard to the aforesaid amount at the time of disposal of the case in C.C.No.2 of 2017.

17. This Criminal Original Petition is disposed of with the aforesaid directions.

smv

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Special Judge
TNPID ACT, Chennai,

2.State of Tamilnadu
Rep.by the Inspector of Police,
E.O.W.II, Vellore

3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.5870 of 2016

Kak(30/04/2019)