

HONOURABLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.34645 of 2013

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for respondent Nos.2, 3, 4, 6 and 8.

2) The prayer sought in the writ petition is as under:

“... to issue a writ, order or direction more particularly one in the nature of mandamus by calling records.

- a) declaring the undated notice issued by the 10th respondent for seizure of the property based on the FIR No.96/13 by invoking the provisions of Section 91 of Cr.P.C., as illegal, arbitrary, void abinitio, null, contrary to the provisions of Section 173, 174, 176 and 178 of the Contracts Act, 1872 and violation of Article 14, 19(1)(g) and 300-A of the Constitution of India and thereby quash the same, and
- b) declaring the action of the respondents No.3 to 9 in seizing the property of the petitioner based on the alleged FIRs by invoking the provisions of Section 91 of Cr.P.C., as illegal, arbitrary, void, abinitio, null, contrary to the provisions of the Section 73, 174, 176 and 178 of the Contracts Act, 1872 and violation of Article 14, 19(1)(g) and 300-A of the Constitution of India; and
- c) to direct the respondents 4 to 9 release the seized ornaments to the petitioner and/or to provide guarantee or security from the defacto complainant or by the police to make good all losses sustained by the petitioner in view of the illegal seizures; and
- d) consequently direct the respondent No.1 and 2 provide protection/security to the petitioner from such losses arise due to the acts of respondent No.4 to 10,
- e) to direct the respondent No.1 and 2 to clarify the protection of the legitimate right of the petitioner in recovering its dues and/or legally pledged security.”

3) Respondent No.4 filed a counter affidavit denying the averments made in the affidavit filed in support of the writ petition and contended *inter alia* that one Mr. M. Suresh Kumar, resident of Saroornagar, Cyberabad, had approached

the Saroornagar Police Station on 31.10.2013 and lodged a complaint stating that he is the Divisional Manager of Shriram City Union Finance Limited, Dilshuknagar Division and their 6th branch is located at Champapet and that one customer, Sri Y. Sekhar Reddy, obtained gold loan on several occasions from Sriram Finance to the tune of Rs.16,16,300/- by pledging gold ornaments weighing 796.06 grams and that on 26.10.2013, he secured release of some gold ornaments by paying Rs.1,89,240/-. After lapse of some time, the said Sekhar Reddy identified the released property to be fake and immediately approached the company and on his complaint, company people enquired during which the accountant of the company, Mr. N. Raju, admitted that he has taken the gold ornaments packed in six packets and pledged some ornaments at Muthoot Finance at Jangaon and sold some gold ornaments to Prakash Chand Chowdary and Mahender Singh Pariwar of Green Park colony, Saroornagar, who are running pawn broker shops and hence requested to take necessary action against Mr. N. Raju and others for misappropriation of the entrusted property. Based on the said complaint, a case in Crime No.747 of 2013 for the offence under Sections 420 and 408 IPC was registered at Saroornagar Police Station on 31.10.2013 and investigation was taken up. During the course of examination, the 4th respondent examined the complainant and other witnesses and recorded their detailed statements. Based on the said

statements, accused Nos.1 to 3 were arrested on 07.11.2013 and remanded to judicial custody by showing accused Nos.4 to 6 as absconding. On the requisition filed by respondent No.4, police custody for A1 to A3 was given for the purpose of investigation. During the course of investigation, respondent No.4 along with his staff and A1 to A3 went to Vadklakonda Village, Jangaon Mandal, Warangal District on 13.11.2013, whereat he recovered the ornaments at the instance of A3 in the presence of mediators and seized them under the cover of mediators report. On the same day, he approached Muthoot Finance Corporation, Jangaon, Warangal District for recovery of case property where the authorities informed that they will get approval from their head office and proceed further into the matter. On 14.11.2013, respondent No.4 along with A1 to A3 and mediators went to the office of Muthoot Finance Corporation at Jangaon, Warangal District, where A2 pledged gold ornaments of the case, provided copies of FIR, confession statement of A2 and recovered the same under the seizure report. After completion of formalities, the seizure report was handed over to the Branch Manager of Muthoot Finance Corporation at Jangaon, Warangal, in the presence of mediators. On 26.11.2013, the 4th respondent proceeded to the Court of Judicial Magistrate of First Class, Special Mobile Court, Ranga Reddy District with all recovered case properties together with Form No.66 and submitted before the Court. However, the 4th respondent was informed to come on

16.12.2013 to deposit the case property. As per the instructions of the learned Magistrate, the 4th respondent deposited the gold ornaments as well as fake ornaments of the case vide CPR.No.314/2013 dated 16.12.2013. It is further mentioned in the counter affidavit that there is ample evidence in the case that A2, Mr. Namala Madhu, had pledged the gold ornaments with the Muthoot finance Corporation, Jangaon, Warangal District and on his confession, the stolen property was recovered. In the counter affidavit it is also stated that investigation was almost completed and the charge sheet is being filed in the Court concerned.

4) Learned Government Pleader also placed on record written instructions dated 26.12.2019 issued by the Assistant Commissioner of Police, Division-D, CCS, DD, Hyderabad.

5) From a perusal of the said written instructions, it is revealed that the total value of the fraud occurred between the period from 15.12.2011 to 27.06.2012 was 17.5 kgs of gold. On the date of issuance of the written instructions the trial in C.C.No.179 of 2014 was commenced and out of 66 witnesses 8 witnesses have given their evidence and the concerned Court issued summons to some more witnesses for their appearance on 30.12.2019. It is further mentioned that the claim over the property of the petitioner pertaining to Crime No.151 of 2012 of CCS at this stage is not appropriate and proper for consideration as prayed for by the petitioner.

6) Since the counter affidavit as well as the written instructions clearly indicates that the seized gold ornaments are already deposited before the XII Additional Chief Metropolitan Magistrate, Hyderabad, it is always open for the petitioner to file requisite applications before the concerned Magistrate for appropriate orders as per law.

7) Learned counsel for the petitioner also relied on the judgment of the High Court of Kerala at Ernakulam in W.P.(C).No.18267 of 2013. Their Lordships while considering the facts of the case, which are similar to the facts in the present case, was pleased to observe as under:

“Even if, the first respondent seizes the gold ornaments from the petitioner, it shall be under proper receipt and the fact that the gold ornaments are pledged with the petitioner as security for loan amounts advanced to the 3rd respondent shall be informed to the Magistrate’s Court. Even if police produces the same before the Magistrate Court, the Magistrate Court shall take note of the fact that the gold ornaments are pledged with the petitioner and the Magistrate shall see that ultimate orders passed in the matter shall not in any way prejudice the right of the petitioner to hold the gold ornaments as security for repayment of the loan amount. The petitioner is free to file appropriate application before the concerned Criminal Court for custody of the gold ornaments as security for the amounts advanced by the petitioner to the 3rd respondent. The Criminal Court shall pass appropriate orders on the same, in accordance with law.”

8) In that view of the matter, this Court is of the opinion that the petitioner can move appropriate applications before the concerned Magistrates for custody of the gold ornaments as per law.

9) With the above said observation, the writ petition is disposed of. No order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.

Date: 02.01.2020.
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P. KESHA RAO, J

