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W.P.No.2800 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.2800 of 2023

ICICI Bank Ltd.,
Rep. by its Debt Manager,
As Authorised Signatory,
3rd Floor, West Wing,
Hot No.24, South Phase,
Block No.1, Ambattur Industrial Estate,
Chennai - 600 058.

.. Petitioner

Versus

1. The Regional Transport Officer,
Regional Transport Office,
Kamaraj Salai,
Saram,
Puducherry - 605 013.
2. The Superintendent of Police,
Economic Offences Wing (Ramanathapuram),
Camp @ Tiruchirapalli,
Trichy.
3. The Deputy Superintendent of Police,
Economic Offences Wing (Ramanathapuram),
Camp @ Tiruchirapalli,
Trichy, (Investigation Officer of Cr.No.78/2021,
Thanjavur Economic Offence Wing).
4. M/s.Raahath Transport,



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A Proprietary Concern,
No.2, Subbaihah Street,
Ellaipillaichavady,
Puducherry - 605 001.

5. K.Afsal Rahman

* W.P dismissed as not pressed as against R4, R5
vide order dated 09.06.2023 made in
W.P.No.2800 of 2023 .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus to call for the records on the file of 3rd respondent in C.No.256/DSP/EOW/RMD@TRICHY/2021, dated 28.06.2022 and quash the same consequently to direct the 1st respondent to remove the entry of blacklisting of the vehicles bearing Nos.PY-05-F-2233, PY-05-F-2266, PY-05-F-4399, PY-05-F-7699, PY-05-F-7599, PY-05-F-4299.

*Prayer amended vide order, dated 17.07.2023 made in W.M.P.No.19871 of 2023 in W.P.No.2800 of 2023.

For Petitioner : Mr.P.Kannan Kumar

For Respondents : Mr.M.Nirmal Kumar,
Government Advocate,
Puducherry, for R1

ORDER

This Writ Petition has been filed challenging the proceedings of the third respondent, dated 28.06.2022 and for a consequential direction to the first respondent to remove the entry whereby the vehicles belonging the petitioner has been blacklisted.



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2. Heard Mr.P.Kannan Kumar, learned Counsel for the petitioner and Mr.M.Nirmal Kumar, learned Government Advocate, Puducherry for the first respondent.

3. M/s.Raahath Transport borrowed money from I.C.I.C.I bank along with one Afsal Rahman and a sum of Rs.7.27 crores was sanctioned for purchase of buses on credit facility. The borrowers failed to repay back the amount and hence, proceedings were initiated under SARFAESI Act, 2002. Accordingly, the demand notice was issued under Section 13(2) of the Act and possession notice under Section 13(4) of the Act was issued and the possession of the vehicles was also taken by the petitioner bank. Thereafter, the petitioner bank also took steps to issue sale notice for sale of the vehicles in order to recover the amount that was borrowed.

4. The third respondent had sent a communication to the petitioner to provide for the loan details, vehicle details etc. The petitioner also provided the necessary details to the third respondent. On receiving the details, the third respondent had given a communication to the first respondent and the



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first respondent had blacklisted all the vehicles. It was also communicated to the petitioner that the vehicles have been attached under TNPID Act by the third respondent. Thereafter, the impugned communication, dated 02.12.2022 was issued by the third respondent directing the petitioner to furnish the details which they had already taken possession from the borrowers in order to take those vehicles into custody. Thereafter, through yet another proceeding, dated 28.06.2022, the third respondent had restrained the transfer of the vehicles to any other person. The same has been put to challenge in this Writ Petition.

5. The issue involved in the present Writ Petition is squarely covered by the earlier order passed by this Court in W.P.(MD).No.23100 of 2022 and 2337 of 2023, dated 14.06.2023. The relevant portions are extracted hereunder:-

"5. Admittedly, the property viz., the omni buses belong to the petitioners, who are the registered owners even according to the loan agreement between them and the said Kamaludeen. The first charge over these vehicles lies only with the petitioners. It is not known as to how the Additional Superintendent of Police, Economic Offence Wing, Ramanathapuram, would seek a claim to the vehicles in question citing pendency of proceedings before the TNPID



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Court. The petitioners have exercised their statutory right to repossess the property for non-payment of their dues and the same has also been repossessed and is now in the possession of the petitioners. Therefore, the claim of the Additional Superintendent of Police, Economic Offence Wing, Ramanathapuram, has to necessarily be rejected. This Court, on an earlier occasion, in an other matter relating to the very same accused, has allowed the writ petition and quashed the impugned notification.

6. In the light of the above, these writ petitions are allowed as prayed for and the impugned communication in C.No.256/6101/DSP/EOW/RMD @ TRICHY/2022 is quashed and a direction is issued to the first and second respondents to transfer the register certificate in the name of the petitioners. No costs. Consequently, connected miscellaneous petitions are closed."

6. This Court held that the SARFAESI Act, 2002 has priority over the TNPID Act in view of the Section 35 of the Act which has an overriding effect. That apart, the borrower does not become the owner of the vehicles till the last installment is paid and it is the financier who will retain the ownership over the vehicles. Therefore, the respondent Police cannot proceed further to attach the buses which actually belong to the financier. In view of the same, the impugned communication issued by the third respondent is liable to be interfered by this Court and accordingly, the same



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is quashed. There shall be a direction to the first respondent to remove the entry blacklisting the vehicles and this process shall be completed by the first respondent within a period of four weeks from the date of receipt of a copy of this order.

7. In the result, this Writ Petition stands allowed. No costs.

18.08.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

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Saram,
Puducherry - 605 013.
2. The Superintendent of Police,
Economic Offences Wing (Ramanathapuram),
Camp @ Tiruchirapalli,
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3. The Deputy Superintendent of Police,
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Thanjavur Economic Offence Wing).
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N.ANAND VENKATESH, J.

grs

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