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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/04/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Cr1.OP(MD)No.2165 of 2023

and

Cr1.MP(MD)No.1870 of 2023

Velavan : Petitioner/Accused Rank
not known

Vs.

1.State through the
Inspector of Police,
Srivaikundarm Police Station,
Thoothukudi District.
(Crime No.49 of 2021 : R1/Complainant

2.Chenthurkani : R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records of the impugned FIR in Crime No.49 of 2021 on the file of the respondent police, dated 23/03/2021 and quash the same as illegal and for consequential order and pass such further or other orders.

For Petitioner : Mr.K.R.Laxman

For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

For 2nd Respondent : Mr.S.Karthikeyan

**O R D E R**

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This criminal original petition is filed seeking quashment of the case in Crime No.49 of 2021 on the file of the respondent police.

2.The facts in brief:-

The de-facto complainant lodged a complaint stating that on 23/02/2021 at about 07.40 pm, she was returning to her house. At that time near Alwarthoppu Bazar, a person, who came in a two wheeler snatched five sovereigns of gold chain and fled away from that place. She could not identify the accused because of the darkness. On the next day, she lodged a complaint, over which, a case in Crime No.49 of 2022 was registered for the offence punishable under section 392 IPC.

3.Investigation was undertaken and during the course of investigation, the involvement of one Thangalakshmi came to light. During the course of her confession statement, she alleged to have stated that the accused pledged the above said chain with this petitioner's Finance Company and availed a sum of Rs.1,81,500/- as



loan in loan No.00349/MHL/0073, dated 09/04/2022. Now alteration report has been filed by altering the penal provision for the offences punishable under sections 392 and 414 IPC. The petitioner was formally arrested and later, release on bail.

4.Now pending investigation, this quash petition has been filed by the petitioner on the ground that he joined duty as Manager, on 06/10/2022, but whereas the alleged occurrence took place, on 23/02/2021. So absolutely, there is no possibility for him for having committed the offence under section 414 IPC; Apart from that, it is also stated that he is only an employee in the above said Finance Company and there is no scheme or system for verifying the genuineness of the articles at the time of pledging; Without any proper verification of the actual facts, the alternation report has been filed.

5.Heard both sides.

6.It is an unfortunate case against an employee of a private Finance Company.



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7.As per the case of the prosecution, the alleged occurrence took place, on 23/02/2021 at about 03.00 pm and during the course of investigation, the accused was arrested and in the confession statement, he alleged to have stated that he pledged the above said snatched chain with Muthood Finance Corporation. To show the date of the pledging, loan sanctioning letter has been produced along with the typed set of papers. Wherein, we find that the date of sanction order, is 09/04/2022. It was pledged for Rs.1,81,500/- by one Thangalakshmi. The cash was also paid on that date. But in the loan document, we find the signature of the Manager in the above said gold ownership scheme as well as the sanction order. But at the time of the above said loan, it appears that the copies of KYC were also obtained by the Manager. But his name is mentioned as 'Karthik Raja'.

8.Now the learned counsel appearing for the petitioner would submit that the petitioner joined the above Branch only on 06/10/2022, which is evident from the letter written from the Bank of Tuticorin, VOC Nagar Branch. He was directed to join duty at the office situated in Eral, on 06/10/2022. So from the documents, it is seen that he



9. The learned counsel appearing for the petitioner would further submit that absolutely, there was no possibility for the petitioner to verify the genuineness of the person or jewels pledged. Without noting that it is a robbed chain, the above said loan was sanctioned. So he cannot be impleaded or implicated for the offence under section 414 IPC. But here, the petitioner failed to co-operate with the Investigating Officer for completing the process of investigation in identifying the jewels as well as handing over the same to the Investigating Officer for the purpose of continuing the process.

10. Even though, the learned counsel appearing for the petitioner would submit that the petitioner cannot be



compelled to hand over the jewels to the Investigating Officer stating that they gave loan over the property pledged, unless and until the amount is paid, they cannot be directed to hand over the jewels. But this line of argument cannot be accepted. When it is a profit of crime, whatever it may be the position or right of a person in possession, it must be returned to the true owner or victim as the case may be, as per the order of the trial court, at the conclusion of the trial process.

11. With regard to the amount of pledge, the Company has to proceed only against the pledger. Certainly, they cannot go against the victim. Even though, they got some right of lien over the property pledged, he ought to have cooperate with the respondent police in identifying the property, but for which also, he failed to cooperate, which cannot be appreciated and also encouraged or allowed. But however, for failure to cooperate with the Investigating Officer, the implication of this petitioner under section 414 IPC is also clearly out of place and cannot be also be appreciated. Proper steps ought to have been taken by the Investigating Officer through the concerned court for proper direction. Without doing so,



12.As mentioned earlier, under misconception of facts and law, it appears that objection has been made by the petitioner, either in identification of the jewels or in producing or handing over the jewels. So this misconception of law and facts led to implicate this petitioner also. But from the facts and circumstances of this case, I am of the considered view that none of the ingredients for the offence under section 414 IPC are attracted against the petitioner. So the continuation of the investigation against the petitioner will amount to abuse of process of law. But at the same time, as mentioned above, this petitioner is duty bound to co-operate with the respondent police in completing the process of investigation and if he fails to cooperate, then he can be proceeded legally.

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20/04/2023

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G.ILANGOVAN, J

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