



W.P.(MD)No.15855 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

W.P.(MD)No.15855 of 2023
and W.M.P(MD).Nos.13269 and 13271 of 2023

Kotak Mahindra Bank Limited,
Rep.by its Authorized Officer,
Mr.K.N.Ruban,
Having Office at
8th Floor, Zone-2,
TVH Agnitio Park,
No.141, Old Mahabalipuram Road,
Kandhanchavadi,
Chennai-600 096.

... Petitioner

Vs.

1.The Additional Superintendent of Police,
Economic Offence Wing,
Ramanathapuram,
(Camp at Tiruchirappalli,
Crime No.78 of 2021,
on the file of the District Crime Branch, Thanjavur).

2.The Inspector of Police,
Economic and Offence Wing,
Trichy.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned communication in C.No. 256/6101/DSP/EOW/RMD @ TRICHY/2022 dated Nil on the file of the first respondent, quash the same as illegal and consequently enable the petitioner's Bank to register the petition mentioned vehicles to the prospective buyers.

For Petitioner : Mr.A.M.Ramanathan
For Respondents : Mr.S.S.Madhavan
Government Advocate (Crl.side)

ORDER

This Writ Petition is filed seeking for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned communication in C.No.256/6101/DSP/EOW/RMD @ TRICHY/2022 dated Nil issued by the first respondent and quash the same.

2. It is submitted by the learned counsel appearing for the petitioner that one Kamaludeen has availed vehicle loans for six vehicles from the petitioner Bank at Trichy Branch under hypothecation agreement for the body of vehicles and chasis. Since the loan



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installments as agreed have not been paid by him, all the six loan accounts were declared as Non-Performing Assets [NPA]. All the vehicles which were hypothecated to the Bank, were Omni buses. As per the Hypothecation Agreement, the Bank is lawful owner.

3. The first respondent Police have sent an impugned communication dated Nil 2022 in Crime No.78 of 2021 on the file of the second respondent, stating that Kamaludeen has committed an offence punishable under Sections 406, 420 of IPC read with Section 5 of TNPID Act, and thereby, the petitioner Bank shall not deal with the six Omni buses without the permission of the TNPID Court, Madurai. It is submitted by the counsel for the petitioner that since the said Kamaludeen is not the owner of the said six omni buses and that the petitioner Bank is the owner as those buses were purchased under the Hire Purchase Agreement and that the transaction between the petitioner Bank and the said Kamaludeen is nothing to do with the alleged offence in Crime No.78 of 2021 on the file of the second respondent, the petitioner has sought for a direction in the form of Certiorarified Mandamus and to quash the proceedings.



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4. The learned Government Advocate (Criminal side) appearing for the respondents submits that the said Kamaludeen has involved in many such crimes and committed the offences of cheating, misappropriation and other offences involving more than 400 crores under various Police Stations, and that under the TNPID Act, the property belonging to the accused shall not be dealt with without the permission of the TNPID Court.

5. The respondents have not filed any record before the Court to show that the vehicles six in number allegedly belonging to Kamaludeen were purchased out of money alleged to have been earned by Kamaludeen by way of fraud or misappropriation etc., pertaining to Crime No.78 of 2021. The record placed before the Court by the petitioner Bank would disclose that the said Kamaludeen has purchased all the vehicles by borrowing loan from the petitioner Bank. Once all the six vehicles were purchased by Kamaludeen under Hire Purchase Agreement by borrowing loan from the petitioner Bank, as per the terms and conditions of the agreement, the petitioner Bank is the owner of the property.



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6. The learned counsel appearing for the petitioner submits that even though the said Vehicles were seized and were taken possession by the petitioner Bank after declaring the loan account as Non-Performing Asset, the petitioner Bank could not able to transfer the said vehicles in favour of auction purchaser, on account of communication in question issued by the first respondent. The communication sent by the first respondent is not at all connected with Crime No.78 of 2021 and the impugned proceedings of the first respondent will not sustain.

7. The learned counsel appearing for the petitioner submits that the said Kamaludeen has purchased not only six vehicles which were in question in this writ petition but also he has purchased other vehicles and committed default. Similarly, the Police concerned have issued similar proceedings to the petitioner Bank not to deal with those vehicles. Challenging the said communication, the petitioner Bank has challenged the same by way of a writ petition in W.P(MD).No.23100 of 2022.



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8. This Court, while considering the same, has allowed the writ petition on 14.06.2023 quashing the impugned communication therein which is similar to that of the case on hand. The facts of the case also stand on the similar footing.

9. In the light of the above facts, this Writ Petition is allowed and the impugned communication issued in C.No.256/6101/DSP/EOW/RMD @ TRICHY/2022 dated Nil is quashed. There shall be no order as to costs. Connected miscellaneous petitions are closed.

04.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
ssb



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To

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- 2.The Inspector of Police,
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Trichy.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

ssb

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