IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 16TH DAY OF JULY 2019 / 25TH ASHADHA, 1941

WP(C).No.4715 of 2017

PETITIONER/S:

SUSHEELA
AGED 49 YEARS
D/O. OMANA AMMA, RESIDING AT VRINDAVANAM,
KOTTARA, MIYANOOR. P.O., KOLLAM DISTRICT.

BY ADV. SRI.V.A.AJIVAS

RESPONDENT/S:

1 THE DIRECTOR GENERAL OF POLICE (D.G.P)
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM-695 001.

2 THE DISTRICT POLICE SUPERINTEND RURAL
KOTTARAKKARA, KOLLAM DISTRICT-691 506.

3 THE CIRCLE INSPECTOR OF POLICE
EZHUKONE CIRCLE, KOLLAM DISTRICT-691505.

4 THE SUB INSPECTOR OF POLICE,
POOYAPALLY POLICE STATION, KOLLAM DISTRICT-691 537.

SR.GP SRI.P.P.THAJUDEEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16.07.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

V.G.ARUN, J.

The writ petition raises an important issue, regarding the right of a recovery agency functioning in the State to compel a citizen to repay amounts allegedly due to a foreign bank, by resorting to intimidatory tactics. The petitioner had worked as Staff Nurse at Azjir, Central Hospital, Saudi Arabia and had returned to Kerala in the year 2012. While at Saudi Arabia, the petitioner had availed a loan from the Riyadh branch of the Al-Rahji Bank. According to the petitioner, she had repaid the entire amount and had closed the loan account before leaving Saudi Arabia. On 21.1.2017, two persons, who introduced themselves as Ajith and Pradeep came to the petitioner's residence claiming to be Recovery Officers of the Al-Rahji Bank. They informed the

petitioner that her loan account was in default and that unless an amount of 2500 Saudi Riyal is paid immediately towards the outstanding amount, the petitioner would be arrested and taken to Saudi Arabia, for which purpose, they claimed to have obtained warrant of arrest from the Indian Embassy. The intimidating tone in which the said persons spoke, caused apprehension of arrest and succumbing to the threat, the petitioner made arrangements at Saudi Arabia through her husband and relatives and remitted 2500 Saudi Riyal at the Al-Rahji Bank the next day. Thereafter, the said persons contacted the petitioner again and demanded that she should remit a further 50,000 Riyal to the loan account and threatened to arrest her if she failed to remit the amount. The repeated threat compelled the petitioner to approach the Police and thereafter, to file this writ petition.

2. When the writ petition was taken up, this Court directed the Government Pleader to get instructions on the further action taken by the Police on the complaint received from the petitioner and expressed a doubt regarding the legal authority under which those collection agents are functioning and directed the Government Pleader to report regarding the further action taken in the matter and the steps taken to ensure that such collection agents do not carry on their activities in the manner they were doing. Thereafter, the State Police Chief was directed to file a report regarding the remedial measures taken in the matter. Pursuant to the direction, the State Police Chief has filed a statement through the Senior Government Pleader. The statement reveals that in the initial stage, proper investigation was not conducted and the officers responsible for such laxity was being

proceeded against departmentally. It is stated that further investigation of the case has been transferred to the State Crime Branch (CBCID) and the case has been renumbered as Crime No. 200/CR/OCW-1/Tvpm/2018 and is being investigated by the Dy.S.P, CBCID, Kollam Sub Unit from 24.7.2018 onwards. The statement goes on to say that the persons who allegedly threatened the petitioner were engaged by a concern by name KGM Associates, which was the authorised representative of M/s.Bilkish Associates Pvt Ltd, Mumbai, a company registered under the Companies Act at Maharashtra. In its letter to the investigating officer, it is stated that M/sBilkish Associates have been authorised by Al-Rahji Bank and other foreign banks to act on their behalf and that they, or their agents, are not collecting money for any foreign or multinational banks and are only acting as customer co-

ordination centres for those banks. The agreement entered into between M/s. Bilkish Associates and KGM Associates revealed that KGM Associates is engaged for the purpose of debt collection services (both consumer and commercial) in Kerala. The State Police Chief has referred to the Master Circular, on statutory and other restrictions in respect of loans and advances, issued by the Reserve Bank of India, which contains the Guidelines for agents and agencies engaged by banks for recovery of debts. Specific reference is made to Clause 5.7.3 of Circular DBOD No.BP.40/21.04.158/2006-07 dated 3.11.2006, wherein it is provided that the banks and their agents should not resort to intimidation or harassment of any kind, either verbal or physical, against any person during their debt collection efforts, including acts intended to humiliate publicly or invade the privacy of the debtors

family members and friends, making threatening and anonymous calls or making false and misleading representation. It is stated that because of the large number of expatriates from Kerala living/working in various countries, it is, but, natural, that some of them commit offences pertaining to criminal breach of trust, cheating, misappropriation etc, while living abroad. Some of them avail loans from financial institutions abroad and sometimes leave the country without repaying the loan amount. That, the financial institutions engage local agencies or give power of attorney to local persons to collect the dues from the persons who have availed such loans. The State Police Chief has rightly suggested that instead of resorting to strong arm methods, it would be ideal for such financial institutions to take legal recourse or move through the diplomatic channel. Suggestions are also made about the need

for sensitisation of police personnel regarding the procedure to be followed on receipt of complaints through diplomatic channel. It is stated that strict instructions have been given to all District Police Chiefs in the State to take urgent action to ensure that no unauthorised loan collection agents of foreign banks are functioning in the State.

3. The strong-arm methods, for recovery from defaulters, adopted by the banks in our country, utilising the services of collection agents *(sic)*, has time and again invited severe criticism from various courts including the Honourable Apex Court. (see Manager ICICI Bank Ltd v. Prakash Kaur [(2007) 1 KLJ (SC) 846]). The Reserve Bank of India has also issued Master Circulars to modulate the procedure for recovery through recovery agents. The Guidelines mandate that recovery agents shall be engaged by banks only after a

process of due diligence. That, whenever recovery is entrusted with an agency, the bank should inform the borrower the details of the recovery agency. The need for appropriate training to the recovery agents is also highlighted in the guidelines. With respect to complaint received by the Reserve Bank of India regarding abusive practices followed by banks' recovery agents, stringent action is provided. The relevant portion of the Circular reads as follows:-

> **"173. Complaints received by the Reserve Bank regarding abusive practices followed by a bank's recovery agents would invite serious supervisory disapproval. The Reserve Bank would consider imposing a temporary ban (or even a permanent ban in case of persistent abusive practices) for engaging recovery agents on those banks where strictures have been passed/ penalties have been imposed by a High Court/Supreme Court or against its Directors/Officers with regard to the**

> **abusive practices followed by their recovery agents."**

4. The guidelines and action contemplated for violation of the procedure prescribed in the guidelines would be applicable only with respect to banks and financial institutions registered in India. Does this mean that the services of recovery agents/collection agents can be utilised by foreign banks and financial institutions? Can such recovery agents act with impunity? Our answer to both questions is an emphatic 'No'. Any attempt to recover money from an Indian citizen, residing in India, can only be in accordance with the Indian laws, lest it would amount to a challenge to the administration of justice in our country and would violate the constitutional guarantee of equal protection of laws to every citizen of the country. It is always open for the foreign bank or

financial institution to initiate legal action for recovery, which can even be in pursuance of a judgment which the bank has obtained from the foreign country. If failure on the part of the borrower to pay back the amount due to the bank amounts to a criminal offence in the foreign country, the bank can initiate criminal action against the borrower through the diplomatic channel. The engagement of recovery agents by foreign banks and financial institutions for realising the defaulted amount through threat, coercion and duress cannot, under any circumstance, be permitted. Hence, the Police are bound to ensure that no recovery agency, acting on behalf of a foreign bank, is permitted to perpetrate criminal offences for effecting such recovery. We record the statement by the State Police Chief that at present, the petitioner and her family, are not facing any threat from the recovery agents of Al-Rahji Bank and the statement that stringent action would be taken against any high handed action from recovery agencies working on behalf of foreign banks and financial institutions.

The writ petition is disposed of on the basis of the above statements of the State Police Chief. No order as to costs.

Sd/-
K. VINOD CHANDRAN
JUDGE

Sd/-
V.G.ARUN
JUDGE

Scl/17.7

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**THE TRUE COPY OF THE COMPLAINT DATED 30-01-2017 AND ITS RECEIPT FILED BY THE PETITIONER BEFORE THE 1 TO 3RD RESPONDENT AND ITS TRANSLATION.**