

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CrI.O.P. No.28647 of 2014
and
M.P.No.1 of 2014

1.P.Paulraj Naidu @ Paulraj
2.P.Dhanalakshmi
3.Mohan
4.Kasthuri ... Petitioners/A Parties

vs.

1.Gopal Naidu
2.Athilakshmi
3.Balaji
4.Kumar
5.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Ponneri 601 204,
Thiruvalore District.
(Na Ka 3127/2014/A1 proceedings
under Section 107 of Cr.P.C.)
6.The Inspector of Police,
E-4, Kattur Police Station,
Kattur 601 203
Thiruvallore
District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records on the file of the 5th respondent and quash the proceedings in Na.Ka.3127/2014/A1 as illegal, incompetent, irregular and without jurisdiction.

For Petitioner :Mr.V.Raghavachari
for M/s.S.Ramesh Kumar
For Respondents 5 & 6 : Mr. M. Maharaja,
Additional Public Prosecutor

O R D E R

The petitioners are "A" parties and they filed this petition to quash the notice issued by the fifth respondent under Section 107 of the Cr.P.C.

2. It is submitted by the learned counsel for the petitioners that the fifth respondent without properly appreciating the scope of Section 107 and 111 of the Cr.P.C., initiated proceedings against two parties and issued summons to both the parties asking them to appear for enquiry and therefore, the notice issued by the fifth respondent is contrary to Section 111 of the Cr.P.C., and on that ground, the proceedings is liable to be quashed. He also submitted that under section 107 of the Cr.P.C., both the factions cannot be called for enquiry by issuing notice under Section 111 of the Cr.P.C., and on that ground, it is liable to be quashed. He also relied upon the judgments reported in 1984 LW (Crl) 112 in the matter of Ayyavoo Chettiar and Others Vs. Inspector of Police, Ennore Circle, Ennore, Kuppuraj and others and the State represented by the Inspector of Police, Ennore Circle, Ennore; 1983 LW (Crl) 218 in the matter of Sadayan and others vs. Paramasivam and others; 1994-1-LW (Crl) 160 in the matter of Gnanasekar Vs. State and 1987 LW (Crl) 49 in the matter of Shanmugiah and others Vs. State through Inspector of Police, Usilampatti and others, in support of his contention.

3. I am unable to accept the contention of the learned counsel for the petitioners. Under Section 107 of the Cr.P.C., when a learned Executive Magistrate is of the opinion that there is sufficient ground for proceeding on the basis of information received by him that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility, he may require such person to show cause why he should not be ordered to execute a bond, with or without sureties. Under Section 111 of the Cr.P.C., When a learned Magistrate acting under section 107 deems it necessary to require any person to show cause under such section he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

4. In this case, in the impugned notice, the fifth respondent asked the petitioners and respondents 1 to 4 to appear before him for enquiry. He has not passed any order under section 111 of the Cr.P.C. nor passed any final order under Section 107 of the Cr.P.C. and he only issued summons to both the parties asking them to appear before him for enquiry.

5. According to me, only when an order has been passed under Section 111 of the Cr.P.C. by the fifth respondent and if such order is not in compliance with the provision of Section 111 of the Cr.P.C., the same can be challenged. Similarly, while passing order under Section 111 of the Cr.P.C., if notice was issued to both factions, the same can be challenged. As stated supra, the fifth respondent has only taken up the FIR for enquiry and issued notice to both "A" and "B" parties to appear before him for enquiry and he has

not made up his mind to proceed either under Section 111 or 107 of the Cr.P.C.,. Therefore, it is too premature to contend now that the order is in violation of Section 111 or 107 of the Cr.P.C., and the fifth respondent should not have issued summons to both the parties, which is against the provisions of Section 107 of the Cr.P.C.,.

6. In the judgments relied upon by the learned counsel for the petitioners, order passed under Section 111 of the Cr.P.C. was challenged and in that context, the learned Judge has held that while issuing order under Section 111 of the Cr.P.C., both factions cannot be directed to appear for enquiry. The same is also reiterated in the judgments reported in 1983 L.W.(Crl.)221 in the matter of K.P.Murugesan and 96 others v. State by Inspector of Police, Keeranur; 1982 L.W.(Crl)61 in the matter of Athianna Gounder and others v. Nachiappan and others and 1981 L.W.(Crl) 106 in the matter of Thirumalaiappa Gounder alias C.Chinnaswamy & others.

7. In the judgments reported in 1984 LW (Crl) 112 supra, the learned Judge relied upon the judgments reported in 1981 L.W.(Crl) 106, 1983 L.W.(Crl.)221 and 1983 LW (Crl) 218 supra and held that notice under Section 111 of the Cr.P.C. has to satisfy a double test. The first is that the notice must furnish all the information which is laid against a person or persons and the second is, before issuing a notice, the Magistrate has to satisfy himself that the situation calls for issuing of a show cause order.

8. In all those cases, the proceedings under Section 111 of the Cr.P.C., was challenged and in that context, it was so held. As stated supra, the notice which is said to be impugned in this petition is only a summons issued by the fifth respondent directing the parties to appear and therefore, the said notice cannot be quashed on the ground that it does not comply with Section 111 of the Cr.P.C or both the factions cannot be tried by issuing notice under Section 111 of the Cr.P.C.,. Hence, I do not find any merit in the argument advanced by the learned counsel for the petitioners.

9. In the result, this petition is dismissed. However, liberty is given to the parties to challenge any order that may be passed under Section 111 of the Cr.P.C. if they so advised. The connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

asvm

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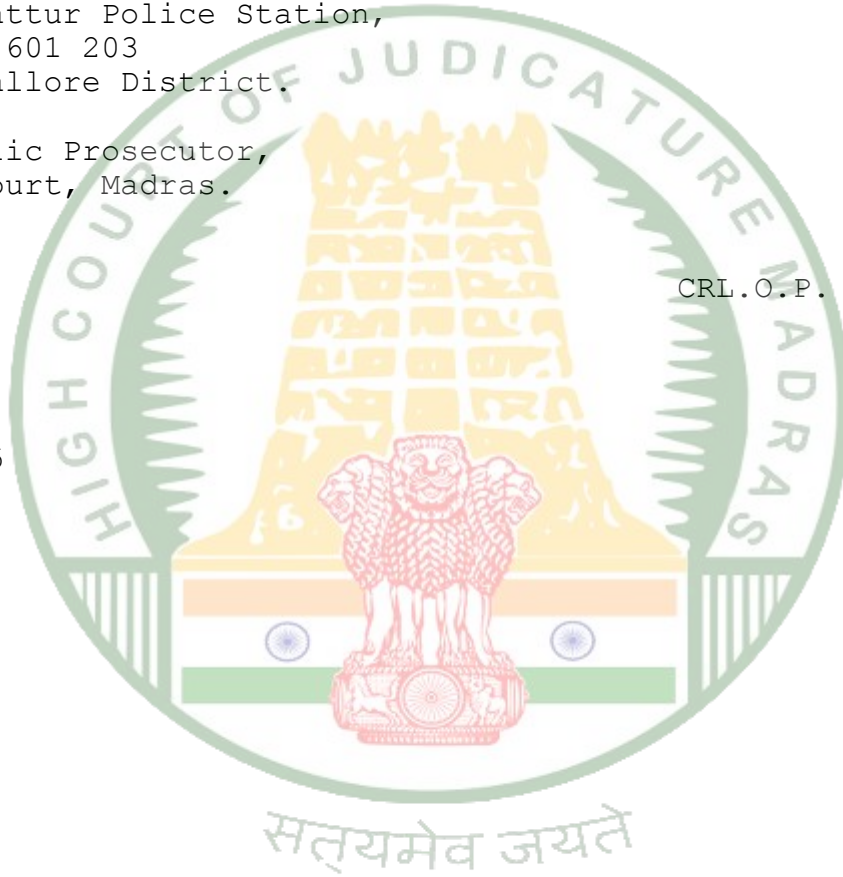
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