



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2015

CORAM:

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**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**

Cr1.O.P.(MD)No.21065 OF 2015

and

M.P.(MD)Nos.1 and 2 of 2011

1.Nellaiappan

2.Thangaiah

... Petitioners/ 'A' Party

Vs.

1.The Executive Magistrate-cum-  
Deputy Commissioner of Police,  
Law and Order,  
Tirunelveli City.

2.The Inspector of Police,  
Thatchanallur Police Station,  
Tirunelveli City  
(Crime No. 334 of 2015)

...Respondents/Respondents

3.Kopparai Subramanian

... Respondent/ 'B' Party

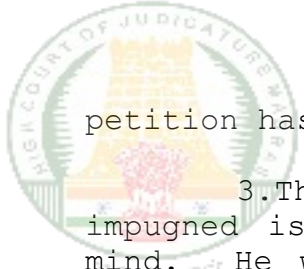
PRAYER: The Civil Original Petition is filed under Section 482 Cr.P.C., to call for the entire records of the proceedings initiated by the Executive Magistrate and Deputy Commissioner of Police, Law and Order, Tirunelveli City vide his proceedings in Case NO.334 of 2015 and quash the same and pass such any or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioners : Mr.R.Anand for Mr.P.Samuel Gunasingh  
For R1 & R2 : Mrs.Prabha,  
Government Advocate

O R D E R

The petitioners herein have come forward with this petition to quash the proceedings initiated by the Executive Magistrate and Deputy Commissioner of Police, Law and Order, Tirunelveli City in Case No.334 of 2015 under Section 107 Cr.P.C.

2. The crux of the issue that exists between the 'A' Party and 'B' Party is that there is a tank at Tiruenveli Town in the name of Nainarkulam, in which, fishery right for catching fishes was originally given to the 'B' Party by the H.R. & C.E. Department and later on, the same right was given to the petitioners by the Public Works Department. In that connection, 'A' party has moved a writ petition and obtained an order as against H.R. & C.E. Department. Following the recommendation made by the second respondent, the first espondent has taken action under Section 107 Cr.P.C. against the petitioners and hence, the present



petition has been filed.

3. The learned counsel for the petitioners submitted that the order impugned is liable to be set aside, since there is no application of mind. He would further submit that on a bare perusal of the impugned order it is crystal clear that the said order does not satisfy the twin tests. There is nothing to indicate in the order impugned, regarding the alleged verbal fight between the 'A' Party and 'B' party. In support of his contention, the counsel has relied upon the judgments of this Hon'ble Court in *Somasundaram and others Vs. The Revenue Divisional Officer, Dharapuram and another* (2002 MLJ (Cr1.) 155) and in *Palani and others Vs. the Inspector of Police, Pudhukottai Police Station, Pudhukottai, Thoothukudi District and others*.

4. Heard the counsel appearing for the petitioners and the Government Advocate (Cr1.side) appearing of the respondents 1 and 2.

5. Considering the very same issue, this Hon'ble Court in *Somasundaram and others Vs. The Revenue Divisional Officer, Dharapuram and another* (2002 MLJ (Cr1.) 155) has held as follows:

"6. An order passed under Sec.111, Cr1.P.C. has to satisfy a double test: (1) It must set forth the substance of the information received as well as the amount of the bond to be executed, the terms on which it is to be in force and the number, character and class of sureties (if any required). (2) Besides, the order must also reflect that the Magistrate has assessed the truth of the information and the need for taking action under Sec.170, Cr1.P.C. for preservation of peace and order. In the present case, as already seen, the orders passed under Sec.111 Cr.P.C. do not set forth the substance of information received by the Sub-Divisional Magistrate and the nature of the case the petitioners have to meet before entering appearance. Lack of information in the show cause order has caused prejudice to the petitioners, since they were not in a position to challenge the same.

7. The Sub-Divisional Magistrate has to satisfy himself about the need to issue a show cause order and the order must reflect the application of mind by the Magistrate to the facts placed before him. The impugned orders do not indicate application of mind by the Magistrate and they do not satisfy the double test much less any one of them and hence they are liable to be quashed."

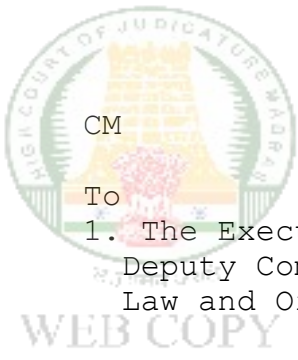
6. Following the ratio already laid down by this Court and also applying the same to the facts of the present case, this Court is of the view that the order impugned is liable to be set aside and accordingly the same is set aside. The Criminal original Petition is allowed. Consequently, connected M.Ps. are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



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To

1. The Executive Magistrate-cum-  
Deputy Commissioner of Police,  
Law and Order, Tirunelveli City.

2. The Inspector of Police,  
Thatchanallur Police Station,  
Tirunelveli City

3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.P.Samuel Gunasingh Advocate Sr.No.64594

GJM/AMF/19.11.2015-2P-5C

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