

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 23.07.2015****CORAM:****THE HONOURABLE MR. JUSTICE M.M. SUNDRESH****Writ Petition. (MD) No. 12720 of 2015
M.P. (MD) .NO.1/2015**

Ravi

... Petitioner

Vs.

1. The District Collector / District Magistrate,
Theni District.2. Major Adjutant/Presiding Officer,
Officer Assembling Court of Enquiry,
110, Infantry Battalion, (TA),
Redfield Post, Coimbatore.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus, forbearing the respondents from issuing any further summon to the petitioner and conducting enquiry, relating with the summon dated 06.07.2015 issued by the 1st respondent till the disposal of Criminal proceeding in CC No.233/2014 on the file of Chief Judicial Magistrate, Erode.

For Petitioner : Mr.R.Suriyanarayanan

For Respondents : Mr.M.Murugan Government Advocate

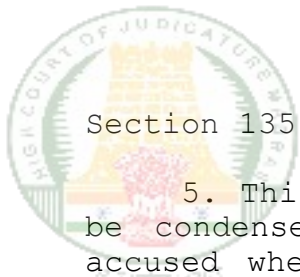
O R D E R

The petitioner has already arrayed as an accused in C.C.No.233 of 2014 on the file of the learned Chief Judicial Magistrate, Erode. By the proceedings dated 06.07.2015, the first respondent issued the witness summon to the petitioner to assemble at 110, Infantry Battalion, (TA), Redfield Post, Coimbatore on 10.07.2015 at 10.00 a.m.

2. The petitioner instead of appearing before the court in pursuant to the summons issued has come forward with this Writ Petition, seeking a Writ of Mandamus forbearing the respondents to issue any further summons till the disposal of the C.C.233 of 2014 pending on the file of the learned Chief Judicial Magistrate, Erode.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondents and perused the materials available on record.

4. The learned counsel for the petitioner has raised two submissions. The first submission is that in view of the pendency of the Criminal case in which he is an accused, he cannot be forced to give evidence in the proceedings initiated by the court of enquiry. The second submission of the petitioner is that the summons issued is in violence of



Section 135(3) of Army Act.

5. This court is of the considered view that both submissions cannot be condensed in C.C.No.233 of 2014. Admittedly, the petitioner is an accused whereas the petitioner was issued summons as a witness in the court of enquiry, Section 135(3) of the Army Act is also not violated. As admitted, the petitioner was issued with the witness summons. The learned counsel for the petitioner has made reliance upon Section 135(3) of the Army Act.

6. Section 135(3) of the Army Act stands on a different footing. Further more the case on hand, the summons was issued by the leaned District Collector/District Magistrate, Theni to require the attention of the petitioner for the hearing at Coimbatore. Summons is a part of a procedural law, the petitioner would not be said to be agreed to the said summons as he was asked to appear as a witness. He has also not challenged the said summons, which incidentally has expired. This court cannot forced any apparent conflict between the pending proceedings on the summons issued at this stage.

7. Hence, this court finds that this petition is liable to be dismissed. Accordingly, the Writ Petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar.

PJL

To

1. The Chief Judicial Magistrate, Erode.

2.The District Collector / District Magistrate,
Theni District.

3.Major Adjutant/Presiding Officer,
Officer Assembling Court of Enquiry,
110, Infantry Battalion, (TA),
Redfield Post,
Coimbatore.

+1CC to Spl Government Pleader SR.No.41134

Writ Petition(MD)No.12720 of 2015

Dated: 23.07.2015