



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.07.2015
CORAM:

THE HONOURABLE MR.JUSTICE V.S.RAVI

Cr1.O.P. (MD) No.12529 of 2011
and M.P (MD) NO.2 OF 2011

WEB COPY

1. G.Gnanasekaran
2. G.Murugesu Pandian
3. G.Parthibaraja
4. M.Balamurugan
5. S.Suresh
6. Sudalaimani

... Petitioners

Vs.

1. The Revenue Divisional Officer cum Sub-Divisional Magistrate,
Aruppukkottai, Virudhunagar District.
2. The Thashildar cum Executive Magistrate,
Aruppukkottai, Virudhunagar District.
3. The Inspector of Police,
Aruppukkottai Taluk Police Station,
I/c. Aruppukkottai Nagar Police Station,
Virudhunagar District.
4. Mr.C.Jegadeesan

... Respondents

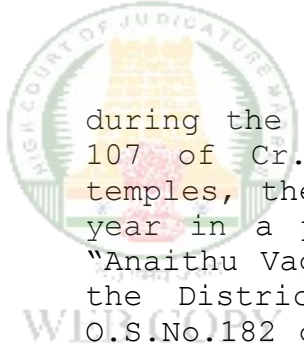
PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to the impugned order in M.C.(A2) 494/2011 dated 19.08.2011 on the file of the first respondent and quash the same as illegal.

For Petitioners	: M/s. T.Lajapathi Roy
For Respondent	: Mr. A.P.Balasubramanian
NO.1 TO 3	Government Advocate (Crl. Side)
FOR R-4	: NO APPEARANCE

O R D E R

This Criminal Original Petition has been filed by the petitioners to call for the records pertaining to the impugned order in M.C.(A2) 494/2011 dated 19.08.2011 on the file of the first respondent and quash the same as illegal.

2.The petitioners have submitted that the proceedings of the first respondent is illegal, and liable to be quashed. The said impugned order has been passed by the first respondent with non-application of mind and the law is well settled that under the proceedings of Section 107 of Cr.P.C the notice shall be despatched separately for each party but the first respondent has not followed the procedure in the said impugned order. The first respondent has further directed the petitioners to appear before him on 23.08.2011 at about 10.00A.M and to submit explanation, as to why the petitioners should not furnish and execute a bond sum of Rs.1,000/- with own bond as well as submit the explanation



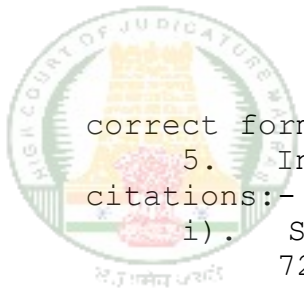
during the enquiry to take action against the petitioners under Section 107 of Cr.P.C. After getting the administrative in charge of the temples, the petitioners have conducted the "Massikkalarai Festival" last year in a peaceful and grand manner with the full co-operation of the "Anaithu Vagaiyara Pangaligal". Further, the petitioners have approached the District Munsif Court, Aruppukkottai by filing a civil suit in O.S.No.182 of 2010 praying for permanent injunction restraining the above said Mr.Kanagavel and others / A-Party in anyway interfering with the peaceful administration of the temples by the present administrative committee headed by the people of the petitioners without following due process of law and obtained an order of "Status Quo" in I.A.No.313/2010 and the said Civil proceedings are pending. Subsequent, to the above said suit filed by the petitioners, said Mr.S.P.C.Mani who is the member of A-Party has also filed a suit in O.S.No.298 of 2010 and the suit is also pending. In such circumstances, the first respondent has passed the said impugned order in a mechanical manner and failed to apply his mind and the order of the first respondent would not show that the truth must be accessed by him as per the settled law.

2.1 Further, the petitioners have submitted in their grounds that two suits have been filed by the both parties and pending before the learned District Munsif Court, Aruppukkottai and the criminal case is filed against the fourth respondent and others as per the order of Court below, and the same is under investigation and pending trial but the first respondent has passed the said impugned order without considering the fact in violation of natural justice. Section 107 of Cr.P.C. is aimed at persons who cause a reasonable apprehension of breach of peace or disturbance to public tranquillity and the proceedings under this section are preventive in nature. In the present case, the petitioners are in no way affecting public peace and tranquillity. There are two distinct sets of circumstances in which a learned Magistrate may take action under Section 107 of Cr.P.C, first when a person is likely to commit a breach of the peace or disturb the public tranquillity by a direct act and secondly when the person may be the indirect cause of a breach of the peace or a disturbance of a public tranquillity by doing a wrongful act. The petitioners have not affected public peace and tranquillity, it is a dispute of individual temple issue.

3. The pertinent point that arises for consideration in this Criminal Original Petition is as follows:

"Whether the petitioners are entitled to get an order to quash the proceedings initiated by the learned Revenue Divisional Officer cum Sub-Divisional Magistrate, Aruppukkottai, Virudhunagar District in M.C.No.(A2) 494/2011 dated 19.08.2011 for the reasons stated in the petition?

4. Along with Criminal Original Petition, the petitioners have filed the impugned order dated 19.08.2011 passed in M.C.No.(A2) 494/2011 by the learned Revenue Divisional Officer cum Sub-Divisional Magistrate, Aruppukkottai, Virudhunagar District. It is specifically submitted on behalf of the petitioners that the Revenue Divisional Officer cum Sub-Divisional Magistrate, Aruppukkottai, Virudhunagar District has not assessed the truth of the information and the need for taking action under Section 107 Cr.P.C. for preservation peace while passing the impugned order. Further, it is pointed out on behalf of the petitioners, herein that the impugned order does not indicate the application of mind by the Revenue Divisional Officer cum Sub-Divisional Magistrate, Aruppukkottai, Virudhunagar District, and the impugned order is not in the



correct format nor to the mandatory requirements of law.

5. In this connection, it is useful to refer to the following citations:-

i). Somasundaram v. The Revenue Divisional Officer (2002 (1) CTC 72)

Code of Criminal Procedure, 1973, Sections 107, 111, 482 - First Information Report - Before proceeding under Section 111, it has to satisfy double test, namely notice must furnish all information which are laid against person and before issuing Notice under Section 107- Orders passed do not set forth substance of information recorded by Sub-Divisional Magistrate and nature of case petitioner has to meet before entering appearance - Sub-Divisional Magistrate has to satisfy himself about need to issue Show Cause Order and Order must disclose application of mind by Magistrate to facts placed before him - Magistrate must assess truth of information and need for taking action for preservation of peace.

ii). Mohan and others v. State by Inspector of Police,

Pasupathypalayam P.S and another (2003) M.L.J.(Cri) 558)

"A careful perusal of the order passed by the Revenue Divisional Officer -cum-Sub-Divisional Magistrate, Karur dated 8.11.2002 made in M.C.No.5 of 2002 on the file of the second respondent would clearly indicate that the order is not in the correct format nor to the requirements of Sec. 111, Cr.P.C and therefore, since there is no compliance of such mandatory requirements of law stipulated under Section 111, Cr.P.C the order becomes liable only to be set aside and the same is decided accordingly.

iii). P.R.Senniappan v. Revenue Divisional Officer, Coimbatore (2005 M.L.J. (Cri) 108)

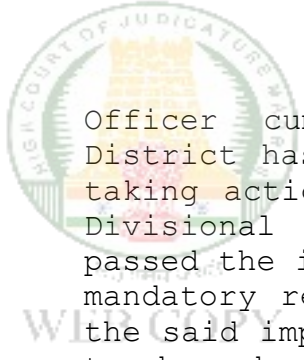
"3. The order is a one sentence order without conveying any fact or circumstance or without any discussion so as to arrive at the decision to issue an order of this sort and it is a mute order without conveying anything relevant, particularly, for consideration of the authority and application of mind and therefore could be branded only as a non-speaking order, which cannot be passed in law."

iv) Palani v. The Inspector of Police (2006 (3) CTC 792)"

"Code of Criminal Procedure, 1973, Sections 107 & 111 - Duty of Executive Magistrate - Substance of information received is not set forth in notice - Order must also reflect that Magistrate has assessed truth of information - and need for taking action for preservation of peace and order - Joint enquiry can be held only in respect of members or association of same group and not against members of rival group - Shortage of information to substantiate application of mind would render order as invalid."

<https://hcservices.ecourts.gov.in/hcservices/>

6. In the present case also, on a careful perusal of the materials on records, it is found that the learned Revenue Divisional



Officer cum Sub-Divisional Magistrate, Aruppukkottai, Virudhunagar District has not assessed the truth of the information and the need for taking action and also the learned Revenue Divisional Officer cum Sub-Divisional Magistrate, Aruppukkottai, Virudhunagar District has not passed the impugned order, in the correct format nor to the compliance of mandatory requirements of law, so as to arrive at the decision to issue the said impugned order. In the absence of the said opinion with regard to breach of peace or to disturb tranquility, the learned Revenue Divisional Officer cum Sub-Divisional Magistrate, Aruppukkottai, Virudhunagar District ought not to have issued the impugned order. Further, the learned Revenue Divisional Officer cum Sub-Divisional Magistrate, Aruppukkottai, Virudhunagar District should not merely referred to the complaint. Further, it is seen from the impugned order that learned Revenue Divisional Officer cum Sub-Divisional Magistrate, Aruppukkottai, Virudhunagar District has not made assessment of material facts before issuing the impugned order. Further on a careful scrutiny of the entire records, it is found that the impugned order passed by learned Revenue Divisional Officer cum Sub-Divisional Magistrate, Aruppukkottai, Virudhunagar District is liable to be quashed for the reasons stated in the present criminal original petition.

7. In the result, the Criminal Original petition is allowed and the impugned order passed by the first respondent shall stand quashed. Consequently, Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Revenue Divisional Officer cum Sub-Divisional Magistrate,
Aruppukkottai, Virudhunagar District.
2. The Thashildar cum Executive Magistrate,
Aruppukkottai, Virudhunagar District.
3. The Inspector of Police,
Aruppukkottai Taluk Police Station,
I/c. Aruppukkottai Nagar Police Station,
Virudhunagar District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras
High Court, Madurai.

+1cc to Mr.T.Lajapathy Roy, Advocate, SR No:43505

JAM/NGM-SS/SAR-J/27.8.15/4P-6C

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