



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE V.S. RAVI

Crl.O.P. (MD) No.12999 of 2011

N.Raja

... Petitioners/ A-Party

Vs.

1. The Revenue Divisional Officer,
Trichy.
2. The State rep. By
The Inspector of Police,
Gandhi Market,
Trichy.
3. N.Rajendiran

... Respondents 1 & 2
... 3rd respondent/B Party

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to the impugned order No.Na.Ka.A1/5776/2009, dated 15.07.2011, of the first respondent herein and quash the same.

For Petitioner : M/s.D.Rajendran

For Respondents : Mr. A.P.Balasubramanian
1&2 Government Advocate (Crl. Side)
For 3rd Respondent : NA

ORDER

This Criminal Original Petition has been filed by the petitioner to call for the records relating to the impugned order No.Na.Ka.A1/5776/2009, dated 15.07.2011, of the first respondent herein and quash the same.

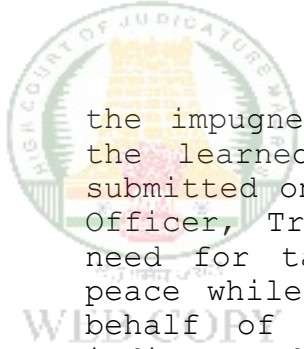
2.The petitioner has submitted that the petitioner has received the said impugned proceedings dated 15.07.2011 of the first respondent, calling upon him to appear and show cause under Section 111 of Cr.P.C. The said impugned order has been passed without any application of mind and is a result of mechanical and arbitrary exercise of power by the first respondent and the said impugned order does not disclose the nature of information that prompted the first respondent to pass the said impugned order. The said impugned order has been passed in hasty manner with total non-application of mind. The show cause shall set forth the substance of information received, the amount of bond to be executed, the form for which it is to be in force and the number of character and class of sureties to be given.

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

"Whether the petitioner is entitled to get an order to quash the proceedings initiated by the learned Revenue Divisional Officer, Trichy in Na.Ka.A1/5776/2009, dated 15.07.2011 for the reasons stated in the petition?"

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

4. Along with Criminal Original Petition, the petitioner has filed



the impugned order dated 15.07.2011 passed in Na.Ka.A1/5776/2009, by the learned Revenue Divisional Officer, Trichy. It is specifically submitted on behalf of the petitioner that the learned Revenue Divisional Officer, Trichy has not assessed the truth of the information and the need for taking action under Section 107 Cr.P.C. for preservation of peace while passing the impugned order. Further, it is pointed out on behalf of the petitioner, herein that the impugned order does not indicate the application of mind by the learned Revenue Divisional Officer, Trichy, 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, Pasupathpalayam 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."

6. In the present case also, on a careful perusal of the materials on records, it is found that the learned Revenue Divisional Officer, Trichy has not assessed the truth of the information and the need for taking action and also the learned Revenue Divisional Officer, Trichy 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, Trichy ought not to have issued the impugned order. Further, the learned Revenue Divisional Officer, Trichy should not merely referred to the complaint. Further, it is seen from the impugned order that the learned Revenue Divisional Officer, Trichy 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 the learned Revenue Divisional Officer, Trichy 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 Petition is closed.

sd/-

Assistant Registrar(Per.Admin)

/True copy/

Sub Assistant Registrar

pmu

To

1. The Revenue Divisional Officer, Trichy.
2. The Inspector of Police, Gandhi Market, Trichy.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

CrI.O.P. (MD) No.12999 of 2011

31.07.2015

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