



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.03.2015
CORAM:

THE HONOURABLE Mr. JUSTICE V.S.RAVI

Crl.O.P. (MD) No.13601 of 2011 and
M.P (MD) Nos.1 to 3 of 2011

WEB COPY

1. M. Sahayaraj
2. R. Sahaya Initha
3. V. Selson
4. T. Siluvai Sebastian
5. S. Elango
6. P. Chellammal
7. K. Kebistan
8. S. Joseph
9. A. Fathima
10. S. Vasthiyanal
11. F. Loosiyal
12. Penchikar
13. X. Chandiyagu
14. C. Martin
15. S. Mustarayappan

... Petitioners

Vs.

1. The Revenue Divisional Officer,
Sub Divisional Magistrate,
Cheranmahadevi
Thirunelveli District

2. The Inspector of Police,
Koodankulam Police Station
Radhapuram Taluk
Thirunelveli District

... 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.No.566 of 2011 dated 05.09.2011 on the file of the first respondent and quash the same as illegal.

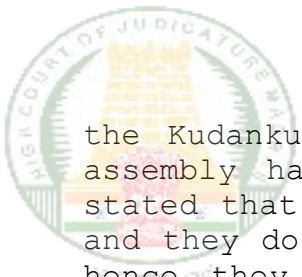
For Petitioners : Mr. S. Rajasekar

For Respondents : Mr. P. Kannithevan
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed by the petitioners to call for the records pertaining to the impugned order in M.C.No.566 of 2011 on the file of first respondent and quash the same as illegal.

2. The petitioners have stated that the first respondent has passed an order under Section 107 and 111 of Cr.P.C without giving prior notice to the petitioners and the first respondent has not furnished any substances of the information. Further the petitioners have stated that



the Kudankulam Project agitation has been dropped after the Tamil Nadu assembly has passed the Resolution. Further the petitioners have also stated that the impugned orders do not indicate the application of mind and they do not satisfy the double tests, much less any one of them and hence they are liable to be quashed. In order to substantiate the averments made in the petition, the petitioners have filed the following judgments:-

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) *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."

3. In the present case also the first respondent has not assessed truth of the information and the need for taking action and the first respondent has not passed the impugned order, in the correct format nor to the compliance of the mandatory requirements of law so as to arrive at the decision to issue the impugned order. Further it is seen, from the impugned order that the first respondent 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 first respondent is liable to be quashed for the reasons stated in the present Criminal Original Petition.

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

Sd/-

Assistant Registrar(Crl.side)



To

1. The Revenue Divisional Officer,
Sub Divisional Magistrate,
Cheranmadevi, Thirunelveli District
2. The Inspector of Police,
Koodankulam Police Station
Radhapuram Taluk, Thirunelveli District
3. The Additional Public Prosecutor,
Madurai Bench of Madras, High Court, Madurai.

+1cc to MR.T.LAJAPATHI ROY, ADVOCATE SR.NO.10633

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