

**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.19515 of 2013
and M.P.(MD)1 of 2013

1. Jahir Hussain
2. Mohamed Rafi
3. Rowther
4. Rabideen
5. Raja @ Raja Mohamed
6. Rowther Naina Mohamed
7. Kadappa Kadar Masthan
8. Sahul Vasim
9. Shajakhan
10. Mohamed Azharudeen

... Petitioners

Vs.

1. The Revenue Divisional Officer-cum-
Sub-Divisional Magistrate,
Ramanathapuram,
Ramanathapuram District.
2. The Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.

... Respondents

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to the proceedings of the first respondent in his proceedings in Na.Ka/A3/ 21045/2013(MC-128/2013) dated 27.08.2013 and quash the same as illegal.

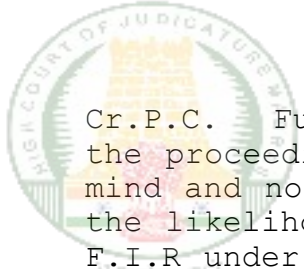
For Petitioners : M/s.J.Peer Mohammed
for Ajmal Associates

For Respondent : Mr. A.P.Balasubramanian
Government Advocate (Cr1. Side)

ORDER

This Criminal Original Petition has been filed by the petitioners to call for the records relating to the proceedings of the first respondent in his proceedings in ef/m3/ 21045/2013(MC-128/2013) dated 27.08.2013 and quash the same as illegal.

<https://hcservices.ecourts.gov.in/hcservices/> 2. The petitioners have submitted that the second respondent has filed the FIR in Crime No.139 of 2013 against the petitioners and recommended the first respondent to pass orders under Section 107 of



Cr.P.C. Further, the petitioners have submitted in their grounds that the proceedings of the first respondent suffer due to non-application of mind and no specific allegation is made as against the petitioners as to the likelihood of committing breach of peace. The very registration of F.I.R under Section 107 of Cr.P.C is not contemplated under Cr.P.C. The information has been forwarded to the first respondent by the second respondent does not even contain the specific incident. It is mandatory on the part of the first respondent to specify the period for executing bond and non-mentioning of the same would show the non-application of the first respondent. Further, in the show cause notice issued by the first respondent, failure to mention details of 'B' party and selective mentioning of 'A' party shows non-application of mind and partial and one sided investigation.

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, Ramanathapuram, Ramanathapuram District in Na.Ka/A3/21045/2013 (MC-128/2013) dated 27.08.2013 for the reasons stated in the petition?

4. Along with Criminal Original Petition, the petitioners have filed the impugned order dated 27.08.2013 passed in Na.Ka/A3/ 21045/2013(MC-128/2013) by the learned Revenue Divisional Officer-cum-Sub-Divisional Magistrate, Ramanathapuram, Ramanathapuram District. It is specifically submitted on behalf of the petitioners that the learned Revenue Divisional Officer-cum-Sub-Divisional Magistrate, Ramanathapuram, Ramanathapuram District 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 petitioners, herein that the impugned order does not indicate the application of mind by the learned Revenue Divisional Officer-cum-Sub-Divisional Magistrate, Ramanathapuram, Ramanathapuram 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,

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-cum-Sub-Divisional Magistrate, Ramanathapuram, Ramanathapuram 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, Ramanathapuram, Ramanathapuram 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, Ramanathapuram, Ramanathapuram District ought not to have issued the impugned order. Further, the learned Revenue Divisional Officer- cum-Sub-Divisional Magistrate, Ramanathapuram, Ramanathapuram District should not merely referred to the complaint. Further, it is seen from the impugned order that the learned Revenue Divisional Officer- cum-Sub-Divisional Magistrate, Ramanathapuram, Ramanathapuram 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 the learned Revenue Divisional Officer-cum-Sub-Divisional Magistrate, Ramanathapuram, Ramanathapuram 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 Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

pmu

To

1. The Revenue Divisional Officer-cum-
Sub-Divisional Magistrate,
Ramanathapuram,
Ramanathapuram District.
2. The Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

GJM-20.8.15-4P-4C

Cr1.O.P. (MD) No.19515 of 2013
Dated: 31.07.2015