



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :4.3.2015

CORAM:
THE HONOURABLE Mr.JUSTICE V.S.RAVI

Crl.O.P. (MD) No.6689 of 2011
and
M.P (MD) Nos. 2 and 3 of 2011

WEB COPY

1.Xavier Benedict
2.Rethnaswamy
3.Sathyanesan, S/O.Singarayan,
4.Silvester
5.Johnson
6.Jegan
7.Lawrance
8.Ebinezer
9.Pandiyan @ Manoharan
10.Francis
11.Berlin Jose
12.Paulraj
13.Sundaram
14.Rajan @ Sankaran
15.Russelraj
16.Edwin
17.Sathyanesan
S/o.Chinnayyan
18.Lazer
19.Claimant Raj
20.Kennady
21.Jeyarani
22.Rajakumari
23.Sunitha
24.Kalarani
25.Loorthu Rani

... Petitioners

Vs.

1.The State of Tamil Nadu
rep. by the Revenue Divisional Officer
cum Divisional Magistrate,
Padmanabhapuram
Kanyakumari District.

2.The State of Tamil Nadu
rep. by the Inspector of Police,
Puthukadai Police Station,
Kanyakumari District.

... Respondents

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to the order of the first respondent in A2/MC 2/2011 dated 28.2.2011 and quash the same.



For Petitioners : Mr.Mohanasundaram
for M/s.C.K.M.Appaji
For Respondents : Mr.P.Kannithevam
Government Advocate (Crl. Side)

CAV on 2.3.2015

Pronounced on 4.3.2015

WEB COPY

O R D E R

This Criminal Original Petition has been filed by the petitioners to quash the proceedings of the learned Revenue Divisional Officer cum Divisional Magistrate, Padmanabhapuram, first respondent herein, in A2/MC 2/2011 dated 28.2.2011.

2. The petitioners have submitted that the order passed by the first respondent is against law and the same is unsustainable in law. It is further submitted by the petitioners that the first respondent has passed the impugned order merely based only on police report of the second respondent. The allegations levelled against the petitioners in the impugned order are vague, bald and not true and the first respondent has not ascertained the facts independently nor conducted any preliminary inquiry. The first respondent has initiated the proceedings after two months from the date of occurrence and the same is an abuse of due process of law. Hence the petitioners have requested to quash the impugned order.

3. In the counter affidavit, the first respondent has submitted that the first respondent has satisfied with the report and initiated proceedings under Section 107 Cr.P.C and the order of the first respondent is proper and there is neither violation of law nor misuse of powers.

4. 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 Divisional Magistrate, Padmanabhapuram in A2/MC.2/2011 dated 28.2.2011 for the reasons stated in the petition?"

5. Along with Criminal Original Petition, the petitioners have filed the impugned order dated 28.2.2011 passed in A2/MC.2/2011 by the learned Revenue Divisional Officer cum Divisional Magistrate, Padmanabhapuram. It is specifically submitted on behalf of the petitioners that the learned Revenue Divisional Officer cum Divisional Magistrate, Padmanabhapuram 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 Divisional Magistrate, Padmanabhapuram and the need for issuance of the said impugned order and also the impugned order is not in the correct format nor to the compliance of the mandatory requirements of law. Further, the petitioners have submitted that there is no disturbance to peace or public tranquility at the petitioners instance.



6. 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)

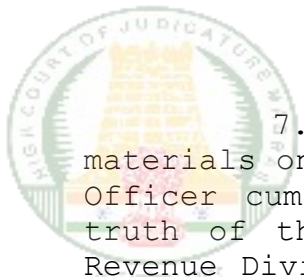
"A careful perusal of the order passed by the Revenue Divisional Officer -cum-Sub-Divisional Magistrate, Karur dated 8.11.2002 made in M.C.No.5 of 2002 on the file of the second respondent would clearly indicate that the order is not in the correct format nor to the requirements of Sec. 111, Cr.P.C and 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 an 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."



7. In the present case also, on a careful perusal of the materials on record, it is found that the learned Revenue Divisional Officer cum Divisional Magistrate, Padmanabhapuram has not assessed the truth of the information and the need for taking action and also the Revenue Divisional Officer cum Divisional Magistrate, Padmanabhapuram 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 Divisional Magistrate, Padmanabhapuram ought not to have issued the impugned order. Further, the learned Revenue Divisional Officer cum Divisional Magistrate, Padmanabhapuram should not merely refer about the complaint. Further, it is seen from the impugned order that the learned Revenue Divisional Officer cum Divisional Magistrate, Padmanabhapuram has not made assessment of material facts independently 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 Sub-Divisional Magistrate cum Revenue Divisional Officer, Padmanabhapuram is liable to be quashed for the reasons stated in the present criminal original petition.

8. In the result, the Criminal Original petition is allowed and the impugned order passed by the learned Revenue Divisional Officer cum Divisional Magistrate, Padmanabhapuram shall stand quashed. Connected M.P(MD) Nos.1, 2 and 3 of 2011 are closed.

SD/-

Assistant Registrar(Writ)

/True copy/

Sub Assistant Registrar

vks

To

1.The Revenue Divisional Officer
cum Divisional Magistrate,
Padmanabhapuram
Kanyakumari District.

2.The Inspector of Police,
Puthukadai Police Station,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr. C.K.M.Appaji, Advocate SR No.10444

Order made in
Crl.O.P. (MD) No.6689 of 2011
and

M.P (MD) Nos.1, 2 and 3 of 2011
4.3.2015