



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 4.3.2015

CORAM:

THE HONOURABLE Mr.JUSTICE V.S.RAVI

Cr1.O.P. (MD) No.3672 of 2013

and

M.P (MD) No.1 of 2013

M/s.Adam &Eva Aqua Food Products,
rep by its Managing Partner,
M.Bilaldeen

... Petitioner

Vs.

1.The Revenue Divisional Officer/
Sub Divisional Magistrate,
Trichy District, Trichy.

2.The Inspector of Police
Jeeyapuram Police Station,
Trichy District.

... Respondents

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to the proceedings of the first respondent in Na.Ka.Aa.01-879/2013 dated 7.2.2013 and quash the same.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.P.Kannithevan
Govt. Advocate (Cr1. Side)

O R D E R

The petitioner has filed by the present petition to call for the records pertaining to the proceedings of the first respondent in Na.Ka.Aa.01-879/2013 dated 7.2.2013 and quash the same.

2. The petitioner has stated that he is the Managing Partner of the Partnership Firm viz. M/s.Adam and Eva Aqua Food Products and the said partnership has been duly registered under the Indian Partnership Act with Registration No.292 of 2011. On 4.2.2013, the second respondent herein, based upon the complaint of one Anwar, has sent a requisition to first respondent to take further action under Section 145(1) of Cr.P.C. The above said action of second respondent is not correct. The first respondent has not at all applied his mind before issuing impugned notice to the petitioner. The first respondent ought to have satisfied himself by perusing the documents before issuing the impugned notice. Already, this Court in W.P (MD) No.2157 of 2013 has granted an order of injunction against the second respondent from in any way interfering with the smooth



running of the business of the petitioner's firm. For the above mentioned reasons, the petitioner has prayed that the impugned notice issued by first respondent is liable to be quashed.

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 first respondent in Na.Ka.Aa.1-879/2013 dated 7.2.2013 for the reasons stated in the petition?"

4. Along with the criminal original petition, the petitioner has enclosed the impugned order dated 7.2.2013, issued by first respondent. On a careful perusal of the impugned order, it is found that the learned Revenue Divisional Officer/ Sub Divisional Magistrate, Trichy District has not assessed the truth of the information and the need for taking action under Section 145 Cr.P.C for preservation of peace while passing the impugned order. Further, the impugned order does not indicate the application of mind by the Revenue Divisional Officer/Sub Divisional Magistrate, Trichy District and the need for issuance of the said show cause notice and therefore 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 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 any decision, 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."

v) Further in the unreported order of Madurai Bench of Madras High Court in the case of James Stephen and others vs. State, represented by Inspector of Police, Mukkoodal, Tirunelveli District in Crl.O.P.No.17632 of 2004 dated 28.6.2007, it has been clearly held as follows:

"5. ... Even in instance No.1, only the petitioners No.1 to 16 are said to have been involved in that instance. This reveals the non-application of mind of the learned Magistrate. On that ground, the proceedings are liable to be quashed."

6. In the present case also, it is found that the learned Revenue Divisional Officer/Sub Divisional Magistrate, Trichy District has not assessed the truth of the information and the need for taking action and the learned Revenue Divisional Officer/ Sub Divisional Magistrate, Trichy 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/ Sub Divisional Magistrate, Trichy District ought not to have issued the impugned order. Further, the Revenue Divisional Officer/Sub Divisional Magistrate, Trichy District has not passed the impugned order, after subjective satisfaction. Further, it is seen from the impugned order that the Revenue Divisional Officer/Sub Divisional Magistrate, Trichy 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/Sub Divisional Magistrate, Trichy 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 learned Revenue Divisional Officer/Sub Divisional Magistrate, Trichy District shall stand quashed. Connected M.P (MD) No.1 of 2013 is closed.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)



To

1. The Revenue Divisional Officer/
Sub Divisional Magistrate, Trichy District, Trichy.

2. The Inspector of Police
Jeeyapuram Police Station, Trichy District.

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

+1cc to M/S. Veera Kathiravan, Advocate in SR.No. 10151

TS/13.03.2015/2P-5C

Order made
in
Cr1.O.P. (MD) No.3672 of 2013
and
M.P (MD) No.1 of 2013

4.3.2015