



WEB COPY

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.8890 of 2011
and
M.P (MD) NO.2 OF 2011

1. Seyad Ali
2. Sulthan Mydeen
3. Mohammed
4. Jabbar
5. Munnisait
6. Mohammed Yusf

... Petitioners

Vs.

1. The Revenue Divisional Officer
cum Sub Divisional Magistrate,
Tenkasi,
Tirunelveli District.

2. The Inspector of Police,
Puliyangudi Police Station,
Tirunelveli District.
(Crime No.33 of 2011)

... Respondents.

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records of the proceedings in M.C.P.No.6 of 2011(A2/946/2011) dated 04.02.2011 on the file of the first respondent and quash the same as illegal.

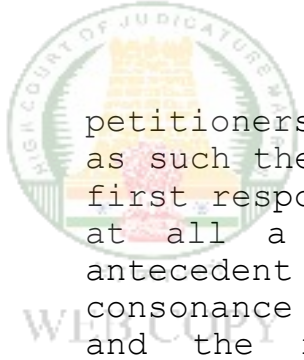
For Petitioners : M/s.S.M.A.Jinnah

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

ORDER

This Criminal Original Petition have been filed by the petitioners to call for the records of the proceedings in M.C.P.No.6 of 2011(A2/946/2011) dated 04.02.2011 on the file of the first respondent and quash the same as illegal.

2.The petitioners have submitted that a dispute has taken place at the Pallivasal Building area and the petitioners have lodged a complaint with the second respondent and on the same day one Mahamed Ali has also lodged a complaint against the petitioners. Further, the petitioners have clearly submitted in their grounds that the first respondent has passed the impugned order without applying his mind and there is no specific allegations made against the



petitioners, as to the likelihood of committing Breach of peace and as such there is no ground existing under Section 107 of Cr.P.C. The first respondent has failed to consider that the petitioners are not at all a party in the alleged dispute and they have no bad antecedent so far. The proceedings of the first respondent is not in consonance with the ingredients of Sections 107 and 111 of Cr.P.C and the first respondent ought to have considered that the petitioners are not an anti social element and they have not done anything to affect the public tranquillity. The first respondent has failed to give a fair opportunity to the petitioner and failed to hear the petitioner side, which is mandatory under the provision 111 of Cr.P.C.

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, Tenkasi, Tirunelveli District in M.C.P.No.6 of 2011(A2/946/2011) dated 04.02.2011 for the reasons stated in the petition?"

4. Along with Criminal Original Petition, the petitioners have filed the impugned order dated 04.02.2011 passed in M.C.P.No.6 of 2011(A2/946/2011) by the learned Revenue Divisional Officer cum Sub Divisional Magistrate, Tenkasi, Tirunelveli District. It is specifically submitted on behalf of the petitioners that the learned Revenue Divisional Officer cum Sub Divisional Magistrate, Tenkasi, Tirunelveli 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, Tenkasi, Tirunelveli 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, 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."

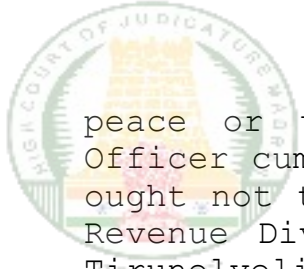
iii). P.R.Senniappan v. Revenue Divisional Officer, Coimbatore (2005 M.L.J. (Cri) 108)

"3. The order is 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, Tenkasi, Tirunelveli 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, Tenkasi, Tirunelveli 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, Tenkasi, Tirunelveli District ought not to have issued the impugned order. Further, the learned Revenue Divisional Officer cum Sub Divisional Magistrate, Tenkasi, Tirunelveli 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, Tenkasi, Tirunelveli 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, Tenkasi, Tirunelveli 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)

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Sub Assistant Registrar

To

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

PMU

TE : 18/08/2015 : 4P/4C

CrI.O.P. (MD) No.8890 of 2011
and
M.P (MD) NO.2 OF 2011
31.07.2015