



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

THE HONOURABLE Mr. JUSTICE V.S.RAVI

Cr1.O.P. (MD) No. 5152 of 2013 and
M.P. (MD) Nos. 1 and 2 of 2013

N.Sathappan Poosari

... Petitioner/B Party

Vs.

1. The District Revenue Office cum Sub Divisional Magistrate,
Devakottai,
Sivagangai District.

2. The Inspector of Police,
Puludhipatti Police Station,
Sivagangai District.

...

Respondents/Respondents

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records in A-1-4630-12 dated 25.09.2012 on the file of the 1st respondent and quash the same.

For Petitioners : M/s. J.Anandkumar

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

Order reserved on 02.03.2015

Order Pronounced on 04.03.2015

ORDER

This Criminal Original Petition has been filed by the petitioner to call for the records in A-1-4630-12 dated 25.09.2012, on the file of the first respondent and quash the same.

2. The petitioner has specifically stated in the grounds of the present petition that no subjective satisfaction has been arrived by the first respondent before issuing the impugned notice and the impugned notice is not in consonance with the provision, as contemplated under Section 111 of Cr.P.C and the initiation of the proceedings under Section 107 of Cr.P.C is not sustainable and that both "A" and "B" parties cannot be clubbed together in the one and the same proceedings and the same is against the object of the Act. The reasons given by the first respondent in issuing the impugned notice are not correct and the same is liable to be set aside.

3. In this connection, it is useful to refer to the following citations:-



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."

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."

4. In the present case also, it is found that the first respondent has not assessed the 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 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 first respondent ought not to have issued the impugned order. Further, the first respondent has not passed the impugned order, after subjective satisfaction. 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.

5. 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 also closed.

Sd/-

Assistant Registrar(CO)

\\True copy\\

Sub Assistant Registrar

To

1. The District Revenue Office cum Sub Divisional Magistrate,
Devakottai,
Sivagangai District.

2. The Inspector of Police,
Puludhipatti Police Station,
Sivagangai District.

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

+2cc to MR.J.ANANDKUMAR, ADVOCATE SR.NO.9987 & 10510

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M.P.(MD).Nos.1 and 2 of 2013
04.03.2015

TRP

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