



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALACrl.O.P.(MD) No.13890 of 2016 and
Crl.M.P.(MD) Nos.6461 & 6462 of 2016

1. Padmanaban
2. Sureshbabu
3. Sabareesan

... Petitioners

-vs-

1. The Executive Magistrate-cum-
Deputy Commissioner of Police,
Law and Order,
Tiruchirappalli City.

2. State represented by
The Inspector of Police,
Gandhi Market Police Station,
Trichy City.

... Respondents

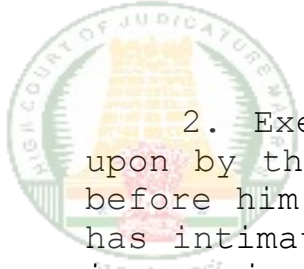
Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records of the 1st respondent vide his proceedings in Na.Ka.No.361/Ne.Se.na and Kaa.Thu.Aa/Thi.Ma/2016 dated 05.07.2016 and quash the same.

For Petitioners : Mr.M.Karunanithi
For Mr.M.Karthikeya Venkitachalapathy
For R1 : Mr.A.P.Balasubramani
Govt. Advocate (Crl.Side)

Orders Reserved on	Orders Pronounced on
17.08.2016	29.08.2016

O R D E R

The Tamil Nadu Government, exercising powers conferred by Sub-Section 1 of Section 20 r/w Sub-Section 1 of Section 22 of Cr.P.C., through G.O.Ms.No.181 Home [CTS VIA] Department dated 25.06.2016, appointed the Deputy Commissioner of Police, Trichy to exercise the power under Section 107 to 110 of Cr.P.C.



2. Exercising such powers, the petitioners have been called upon by the 1st respondent by the order dated 05.07.2016 to appear before him. The communication further reads that the 2nd respondent has intimated the 1st respondent that the petitioners are indulging in causing breach of peace and in order to control the same, a case has been registered in Crime No.563 of 2016 dated 01.07.2016 and that the 1st respondent should initiate proceedings under Section 107 Cr.P.C. This is followed by the order dated 12.07.2016, under which the petitioners have been called upon to show cause as to why they should not be asked to execute a bond for Rs.10,000/- towards keeping good conduct for a period of one year and in case of failure, order would be passed calling upon him to execute a bond for Rs.10,000/- towards keeping good conduct. These proceedings are under challenge in this petition.

Brief Facts:

3. There were disputes between two groups and the petitioners herein are members belonging to "B" Party. The "A" party consisted of J.Mohammed Rafeek, T.M.M.K. Party District Secretary, Ithiyaz Ahamed, T.M.M.K. Party District Treasurer and T.K.Sirajudeen, T.M.M.K. Party Rock Fort Region Secretary. With regard to special prayer to be offered for the Ramzan festival by "A" party, the "B" party opposed it and that made the 2nd respondent to register a case under Section 107 Cr.P.C., and it was submitted to the 1st respondent. Peace Committee was held on 30.06.2016 under the Presidentship of Tahsildar, Trichy and in the Peace Committee Meeting, it was decided that permission to worship would be granted subject to circumstances, prevailing on that date. The 2nd respondent came to know that there had been issues on prior occasion also and this issue is likely to be carried forward and on account of the same, there would be recurring problem and clash among two parties, resulting in law and order problem. To put an end to this, case was registered and submitted before the 1st respondent. The 1st respondent has passed the impugned order dated 05.07.2016, which is under challenge in this petition.

4. Learned counsel for the petitioner would submit that the 1st respondent has no legal competency to pass the impugned order and the order passed is also without jurisdiction, as there was no interim order under Section 111 Cr.P.C. In order to appreciate this contention, it is necessary to look into the provisions of Sections 107 and 111 Cr.P.C.

"107. Security for keeping the peace in other cases."

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that



there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, [with or without sureties] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

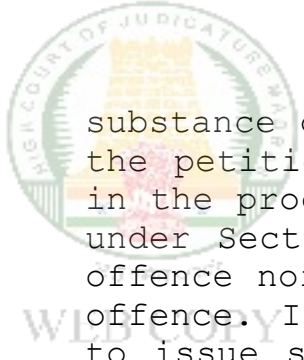
111. Order to be made. When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

5. Unless the Magistrate complies with the mandatory provision of law under Section 111, he will have no jurisdiction to direct persons to appear before him or to secure their presence for the purpose of enquiry. This is the dictum laid down in the case of **Mathanqi Satyanarayana and Others vs State**, reported in **1996 (Cr1.LJ) 1809**, wherein it has been held as under:

"11. I am of the considered view that unless he complies the said mandatory provision of law, he will have no jurisdiction to direct the person proceed against to appear before him or to secure their presence for the purpose of enquiry. Obviously, he has failed to comply the same before issuing the notice dated 22-3-1993. Therefore, it may, safely be concluded that the enquiry held by the Magistrate from 3-4-1993 onwards is not only in contravention of the relevant provisions of law but also without jurisdiction.

6. The provisions of Section 107 is intended for persons, who are of desperate character and habitually disturb the public peace, but at the same time, as the power under this Section is wide and unusual, interfering with the liberty of subject, who has not been found guilty of offence, it must be exercised strictly in accordance with law and this Court is expected to exercise close scrutiny to prevent the same.

7. No doubt, the learned Executive Magistrate has given the



substance of information that he has received about the conduct of the petitioner, but the grounds of satisfaction are not mentioned in the proceedings. It is not known how a case could be registered under Section 107 Cr.P.C. Section 107 Cr.P.C. neither defines any offence nor it is a section providing for punishment for any other offence. It is an enabling provision for the Executive Magistrate to issue show cause notice as to why he should not be ordered to execute a bond, to the person against whom the Magistrate has formed an opinion that there is sufficient reason for proceeding against him.

8. Under such circumstances, it cannot be visualized as to how a case came to be registered by the Inspector of Police against the petitioner herein. Therefore, when the foundation of the case itself is baseless, this Court has no other option except to quash the notice.

9. Accordingly, this petition is allowed and the impugned order dated 05.07.2016 passed by the 1st respondent in Na.Ka.No.361/Ne.Se.na and Kaa.Thu.Aa/Thi.Ma/2016 dated 05.07.2016 is hereby set aside. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To:

1. The Executive Magistrate-cum-Deputy Commissioner of Police, Law and Order, Tiruchirappalli City.
2. The Inspector of Police, Gandhi Market Police Station, Trichy City.
3. The Additional Public Prosecutor Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO MR.M.KARTHIKEYA VENKITACHALAPATHY, ADVOCATE IN SR No. 47791

AR

TE/DB/ : 14/09/2016 : 3P/5C

PRE-DELIVERY ORDER IN
Crl.O.P.(MD) No.13890 of 2016 and
Crl.M.P.(MD) Nos.6461 & 6462 of 2016
29.08.2016