

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM
Crl.R.C.No.1686 of 2016

M.Ganapathy

.. Petitioner

vs.

State by : The Sub-Inspector of Police,
Mangalamedu Police Station,
Perambalur District.
(Crime No.673 of 2016)

.. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C.
against the Order the Divisional First Class Executive Magistrate
cum Revenue Divisional Officer, Perambalur passed in
Na.Ka.Au3/4789/2016 on 10.12.2016.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.M.Mohammed Riyaz
Government Advocate (Crl. Side)

ORDER

This revision challenges the order of the Divisional First
Class Executive Magistrate cum Revenue Divisional Officer,
Perambalur passed in Na.Ka.Au3/4789/2016 on 10.12.2016.

2. Heard Mr.B.Vasudevan, learned counsel for the petitioner
and the learned Government Advocate (Criminal Side) for the
respondent.

3. The Order under challenge has come about ostensibly
pursuant to notice issued by the respondent under section 107
Criminal Procedure Code on 12.12.2016. A bare reading of such
notice reveals that the respondent neither has informed the
reasons for initiation of proceedings under section 107 Criminal
Procedure Code nor required the petitioner to show cause against
the petitioner being required to execute a bond.

4. Learned Government Advocate (Criminal Side) taking us
through the Order under challenge would contend that after a
detailed enquiry, order under section 111 Criminal Procedure

Code has been passed and in pursuance thereof, the petitioner has executed a bond as called for of him.

5. In decision reported in 2002(1) CTC 72 (Somasundaram and 10 others Vs. The Revenue Divisional Officer, Dharapuram and another), this court has held as follows :

"6. An order passed under Section 111 of Cr.P.C. has to satisfy a double test : (1) it must set forth the substance of the information received as well as the amount of the bond to be executed, the terms of which it is to be in force and the number, character and class of sureties (if any required). (2) Besides, the order must also reflect that the Magistrate has assessed the truth of the information and the need for taking action under section 107 of Cr.P.C. for preservation of peace and order. In the present case, as already seen, the orders passed under Section 111 of Cr.P.C. do not set forth the substance of information received by the Sub-Divisional Magistrate and the nature of the case the petitioners have to meet before entering appearance. Lack of information in the show cause order had caused prejudice to the petitioners, since they were not in a position to challenge the same.

7. The sub-Divisional Magistrate has to satisfy himself about the need to issue a show cause order and the order must reflect the application of mind by the Magistrate to the facts placed before him. The impugned orders do not indicate application of mind by the Magistrate and they do not satisfy the double test much less any one of them and hence they are liable to be quashed."

We have at the very beginning of this order informed the flaws therein.

6. This revision shall stand allowed. The order under challenge is set aside. It is open to the respondent to move afresh in accordance with law, if he considers it appropriate.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vrc

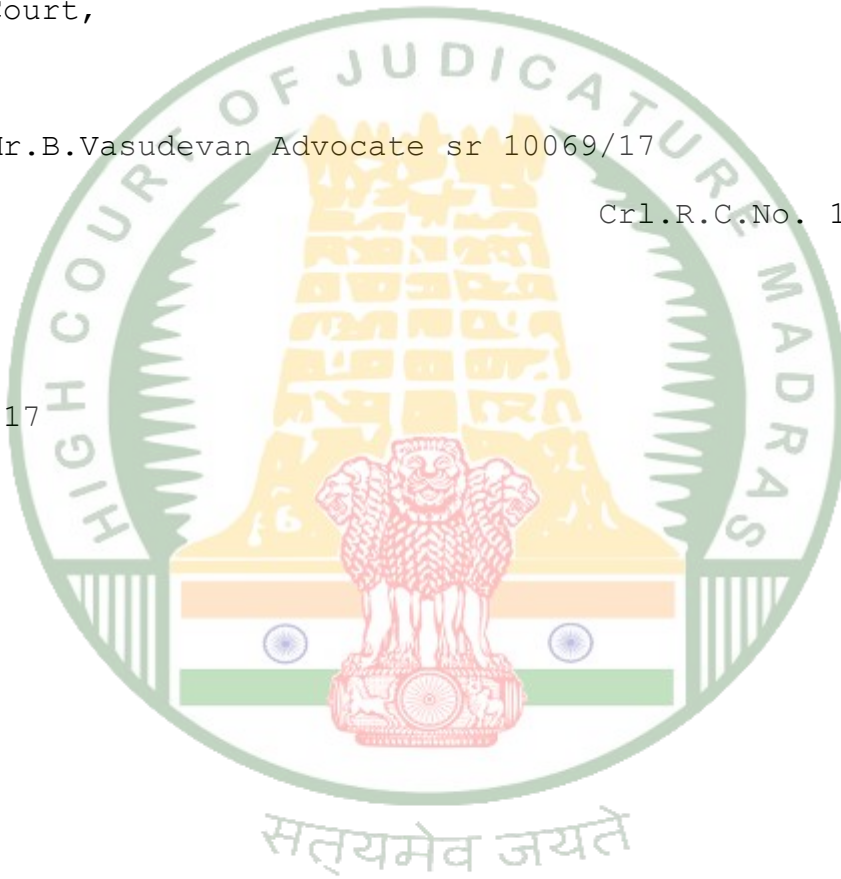
To

1. The Divisional First Class Executive Magistrate
cum Revenue Divisional Officer,
Perambalur
2. The Sub-Inspector of Police,
Mangalamedu Police Station,
Perambalur District.
3. The Public Prosecutor,
High Court,
Madras

+1 cc to Mr.B.Vasudevan Advocate sr 10069/17

Cr1.R.C.No. 1686 of 2016

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