

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.22776 of 2010 and
M.P.No.1 of 2010

- 1.Muthukumarasamy
- 2.Kannan
- 3.Nallathambi
- 4.Selvam
- 5.Ezhilan
- 6.Kaliyaperumal
- 7.Mahalingam
- 8.Ilayaraja
- 9.Mathi
- 10.Jayaraman
- 11.Rajavelu
- 12.Ramadoss

... Petitioners

Vs

- 1.The Sub-Divisional Magistrate-cum-
Revenue Divisional Officer,
O/o. The Revenue Divisional Officer,
Udayarpalayam Post,
Ariyalur District.

- 2.The Inspector of Police,
Meensuriti Police Station,
Ariyalur District
(Crime No.154 of 2010)

- 3.S.Shanmugam
- 4.Citrarasu
- 5.Tamilarasan
- 6.Godiarasu
- 7.S.K.Pandian
- 8.Rasak @ Amirthalingam
- 9.Ramamoorthy
- 10.Anand
- 11.Balasubramaniam
- 12.T.Sekar

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13.Baskar
14.Sellapemmal
15.Balu
16.Annadurai
17.Balamurugan
18.Gunasekaran
19.Sakthivel
20.Suresh

.. Respondents

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.1 of 2010 on the file of the 1st respondent and quash the same.

For Petitioners : Mr.V.Venkatasamy

For Respondents : Mr.P.Muthukumar
for respondents 1 and 2

ORDER

The petitioners have filed this petition to call for the records in C.C.No.1 of 2010 on the file of the 1st respondent and quash the same.

2. Briefly stated case of the petitioner is as follows:

On 25.4.2010, the 2nd respondent registered a case in Crime No.154 of 2010 against the petitioners and the respondents 3 to 20 under Section 107 Cr.P.C. stating that the 3rd respondent Shanmugam was the owner of the land situated at Pappakudi Mathura Melananikuzhi village, Udayarpalayam Taluk, Ariyalur District and the petitioners were claiming that they were in possession of the said land. Both the petitioners and the respondents 3 to 20 were entered into the land and cut casuarina and eucalypts trees in the said land by creating breach of peace. In order to maintain the public peace in the locality, the 2nd respondent has registered the case.

3. After registration of the FIR by the 2nd respondent under Section 107 Cr.P.C. on 25.4.2010, the same was forwarded to the 1st respondent for taking action. Based on the FIR, the 1st respondent took up the case in C.C.No.1 of 2010 and issued summons to both the petitioners and the respondents 3 to 20 for appearance before him on a particular date. Stating that the 1st respondent committed lot of procedural irregularities in issuing summon in C.C.No.1 of 2010, the petitioners have filed this petition.

4. I heard Mr.V.Venkatasamy, learned counsel for the petitioners and Mr.P.Muthukumar, learned counsel for the respondents 1 and 2 and also perused the materials available on record.

5. The learned counsel for the petitioners submitted that the 1st respondent did not apply its mind before invoking the proceedings under Section 107 Cr.P.C. recommended by the 2nd respondent in Crime No.154 of 2010. The 1st respondent also did not apply his mind before invoking the proceedings under Section 107 Cr.P.C. on the ground that the said land dispute relating to the suit in I.A.No.73 of 2010 in O.S.No.46 of 2010 on the file of the learned Sub Court, Ariyalur. He would submit that no preliminary order has been passed by the 1st respondent prior to issuing summons. According to the learned counsel, the entire proceedings would vitiate on the ground of clubbing the petitioner and the respondents 3 to 20 together to appear before themselves for the same hearing. Hence, prayed for quashing of the proceedings in C.C.No.1 of 2010 pending on the file of the 1st respondent.

6. Per contra, the learned counsel for the respondents 1 and 2 submitted that the averments set out in the petition are matter of evidence and there is no need to quash the proceedings in C.C.No.1 of 2010 at this stage. Moreover, there was no procedural violation in issuing summons to the petitioners and prayed for dismissal of the petition.

7. The main grievance of the petitioners is that the 1st respondent has not passed any order under Section 111 Cr.P.C. before initiating proceeding under Section 107 Cr.P.C. against the petitioners and he has simply issued summons to both the petitioners and the respondents 3 to 20 clubbing together to appear before him on 14.5.2010 at 11.00 a.m. either in person or by a pleader. According to the petitioners, the said approach adopted by the 1st respondent is against the law.

8. It was contended by the petitioners that after the receipt of the complaint under Section 107 Cr.P.C., the 1st respondent is duty bound to pass a preliminary order and in the case on hand, no such preliminary order was passed by the 1st respondent and therefore, the entire proceedings initiated against the petitioners are vitiated.

9. Section 107 Cr.P.C. provides:

"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.

10. Section 111 Cr.P.C. provides:

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.

11. Section 116 Cr.P.C. reads thus:

"116. Inquiry as to truth of information.-

(1) When an order under section 111 has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases.

(3) After the commencement, and before the completion, of the inquiry under sub-section (1),

the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made 859 to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that-

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse."

12. Thus, as per Section 107 Cr.P.C., when the Executive Magistrate received an information that a 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 the Magistrate is of the view that there was sufficient ground for proceedings, he may, in the manner provided under Code of Criminal Procedure require the person to show cause why he should not be ordered to execute a bond with or without surety for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit. In the event of the Magistrate arrived at a conclusion that there was sufficient ground for proceeding under Section 107 Cr.P.C., then he has to follow the procedure laid down under Section 111 Cr.P.C.

13. As per Section 111 Cr.P.C., the Magistrate has to make an order in writing, setting forth the substance of the information received, the amount of bond to be executed, the term for which it is to be in force and the number, character and class of the sureties, if any, required. Thereafter, the Magistrate needs to act as per Section 116, which lays down the procedure to be followed in the enquiry to be held by the Magistrate.

14. No material has been produced by the respondents 1 and 2 to show that before initiating the proceedings under Section 107 Cr.P.C., the 1st respondent has passed order under Section 111 Cr.P.C. in writing. On the other hand, the 1st respondent simply issued summons to the petitioners requiring them to appear before him on 14.5.2010. To quote, the summon qua the 1st petitioner Muthukumarasamy reads thus:

"SUMMONS TO AN ACCUSED PERSON

(Section 61 Code of Criminal Procedure)

IN THE COURT OF THE Sub Divisional Magistrate and Revenue Divisional Officer, Udayarpalayam, OF MAGISTRATE CALENDAR CASE NO.1 OF 2010 to Muthukumaraswamy, S/o.Duraisamy, Melannikuzhi Village, Ariyalur District whereas attendance is necessary to charge of LAND DISPUTE in FIR of Meensuritty Police Station Crime No.154 of 2010 Cr.P.C. U/s 107 you are hereby required appear in

person/by pleader before the Sub Divisional Magistrate and Revenue Divisional Officer, Udayarpalayam, at 11.00 am on 14th day of May 2010. Herein fail not.

Dated this 4th day of May 2010

Sd.K.Rathinam

Sub Divisional Magistrate

And

Revenue Divisional Officer, Udayarpalayam"

15. It is also the case of the petitioners that qua the land in question, a civil suit being O.S.No.46 of 2010 was pending before the learned Sub-Court, Ariyalur. The said factum pendency of the suit has not been disputed by the respondents 1 and 2.

16. In the case on hand, before invoking the proceedings under Section 107 Cr.P.C., the 1st respondent has failed to take into account the pendency of the suit. Moreover, the 1st respondent has not produced any order to show that he had arrived at a conclusion to issue summons to the accused persons in C.C.No.1 of 2010 pending on his file. Thus, the 1st respondent has committed procedural violations. Where no preliminary order has been passed by the 1st respondent prior to issue of summon, Tte High Court has undoubtedly power to quash the proceedings.

17. As stated supra, since no preliminary order has been passed by the 1st respondent prior to issue summons to the parties to the proceedings and in respect of the land in question already a civil suit is pending, I am of the view that the proceedings in C.C.No.1 of 2010 on the file of the 1st respondent is vitiated and the same is liable to be quashed.

18. In such view of the matter, this criminal original petition is allowed and C.C.No.1 of 2010 pending on the file of the 1st respondent is quashed. Consequently, connected miscellaneous petition is closed.

vs

Sd/-
Deputy Registrar

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Sub Assistant Registrar

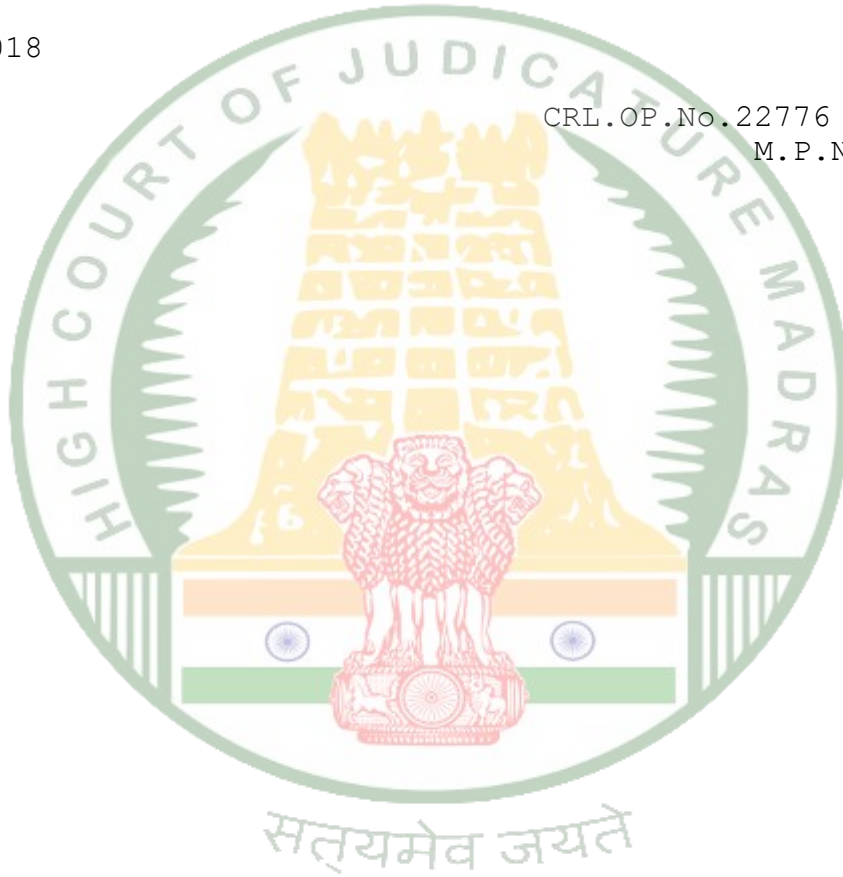
To

1.The Sub-Divisional Magistrate-cum-
Revenue Divisional Officer,
O/o. The Revenue Divisional Officer,
Udayarpalayam Post,
Ariyalur District.

2.The Inspector of Police,
Meensuriti Police Station,
Ariyalur District.

sm:2.11.2018

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