

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 24.03.2017

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

CRL.O.P.No.18750 of 2010
and
M.P.No.1 of 2010

A.Ravichdnaran

.. Petitioner

Vs

The Sub Divisional Executive Magistrate (RDO),
Dharapuram,
Tiruppur.

.. Respondent

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in M.C.2/2010/E on the file of the Sub Divisional Executive Magistrate (RDO), Dharapuram and to quash the proceedings dated 31.5.2010.

For Petitioner : Mr.Balamurugane
for Mr.V.Ayyadurai
For Respondent : Mr.B.Ramesh Babu
Government Advocate

ORDER

This petition under Section 482 Cr.P.C. is directed against the proceedings under Section 107 Cr.P.C. initiated by the respondent in M.C.No.2/2010/E, dated 31.5.2010.

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

The respondent proceeded on the basis of the police report pertaining to the complaint registered in Crime No.1522 of 2010 on the file of the Sub Inspector of Police, Dharapuram Police Station alleging that the petitioner and 7 persons have intercepted the defacto complainant on 17.5.2010 in the process of overtaking the injured vehicle by their car and have assaulted the defacto complainant besides causing cut injuries and other injuries with deadly weapons and have taken away a sum of Rs.5,000/-, which was in possession of the defacto complainant. Based on the complaint, a case in Crime No.1481 of 2010 was registered under Sections 147, 148, 341, 294(b), 365, 323, 324, 506(ii) and 379 IPC.

3. According to the petitioner, based on the solitary incident, the Sub Inspector of Police, Dharapuram Police Station seemed to have submitted a report requesting the respondent to initiate action under Section 107 Cr.P.C. and the said report was assigned with a separate Crime No.1522 of 2010. Similar report against other group of persons in Crime No.1521 of 2010 under Section 107 Cr.P.C. was also submitted pertaining to Crime Nos.1470 and 1499 of 2010.

4. The respondent has passed a common proceeding by way of the impugned order with reference to two set of papers totally unconnected with each other. The petitioner and 7 other persons were issued with an order under Section 111 Cr.P.C. on 31.5.2010. The respondent recorded his satisfaction warranting to initiate such action solely on the basis of the police report without even holding any preliminary enquiry as to the veracity and truthness of the case. Hence, the petitioner has filed the Criminal Original Petition to quash the impugned proceeding of the respondent.

5. Resisting the petition, the respondent filed counter stating that after getting a report from the Inspector of Police, Dharapuram and after making necessary enquiry, the respondent came to understand that both parties of Cable T.V. Operators want to establish their Cable T.V. Operation in Dharapuram jurisdiction to make their business, both parties were ready to break peace in the area and resorted to threatening and have a control under their operation. Finding that the petitioner and his party were found to commit breach of peace and disturb the public tranquillity to do wrongful activities that may probably cause breach of peace, orders were issued observing all formalities, ordering maintenance of peace under Section 107 Cr.P.C. by the respondent. There was no violations of rules and regulation and prayed for dismissal of the petition.

6. I heard Mr.Balamurugane for Mr.Ayyadurai, learned counsel for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate for the respondent and also perused the materials available on record.

7. The main grievance of the petitioner is that without even holding preliminary enquiry as to the veracity and truthness of the case, the respondent issued the impugned order, which is ex-facie illegal and contrary to law. He would submit that the simultaneous proceeding based on the same allegations by the concerned police on one hand and the respondent on the other hand would affect the right of the petitioner besides being opposed to administration of justice and the basic principle of criminal jurisprudence and also abuse of process of law. Since

there was no preliminary enquiry as contemplated in Section 111 Cr.P.C. was conducted before issuing the impugned order, the impugned order is liable to be quashed as being contrary to the mandatory requirement of 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 proceeding initiated against the petitioner is 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 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. A bare perusal of Section 107 Cr.P.C. read with Section 111 Cr.P.C. shows that such proceedings are to be instituted only in respect of information received by the Magistrate if he is satisfied that there is any danger or likelihood of somebody committing breach of the peace and disturbing public tranquillity.

13. The powers under Section 107 Cr.P.C. and some other provisions under which also the Sub Divisional Magistrate has been invested, are to be exercised in the best interests of the maintenance of law and order, public peace and tranquillity and administration of justice.

14. The harmonious construction of Sections 107 and 111 Cr.P.C. clearly suggests that no order requiring any person against whom proceedings under Section 107 Cr.P.C. have been instituted can be passed by the Magistrate to execute a bond for maintaining peace unless a notice is issued to him to show cause as to why he should not be ordered to execute such a bond and this notice is to be given to him only after an order in writing is made by the Magistrate setting forth the substance of the information and among others details of the bond to be executed by the said person. It follows therefore that the Magistrate is expected to apply his mind on the material placed before him by

the Police along with his report and on giving an opportunity to the opposite party to have a say on the question of executing a bond issue appropriate orders in this respect.

15. In CrI. R.C. (MD) No.167 of 2016, decided on 13.6.2016 (Jegan @ Billa Jegan v. The Sub Divisional Magistrate and Sub Collector, Thoothukudi and others), the learned Single Judge of this Court held as under:

"7. Under Sections 107(1) Cr.P.C. the Executive Magistrate were given power to act if they receive any information that it is a fit case that the person should be asked to execute bond to keep peace and good behaviour upto one year. A reading of section 107(1) Cr.P.C. shows that the Executive Magistrate has enormous power. It is pertinent to note that non perform of the terms and conditions of the bond some time lead a person to jail. But it will be without a charge, without a trial. It is a dangerous power. It grants more power to Executive Magistrate. Section 107(1) acts as a check on their powers. Under Section 107(1) Cr.P.C. the Executive Magistrate must record his subjective satisfaction. Thus, he cannot pass oral orders under Section 107(1) Cr.P.C. He cannot simply pass orders according to his whims and fancies. He must give reason though not elaborately but briefly. Section 107(1) Cr.P.C. acts as a check on the arbitrary exercise of power."

16. In Smt.Christalin Costa and others v. State of Goa and others, reported in 1992 CrI.L.J. 3608, the Panaji Bench (Goa) of Bombay High Court held as under:

"8. The principles of natural justice and fairness would demand such action on the part of the Magistrate and his failure in discharging this duty should not be lightly viewed in the special circumstances wherein the impugned order directing the petitioners to execute a bond was passed by him. In my view this circumstance cannot dispense the Magistrate of complying with the provisions of the law and mere fact that the substance of the complaint was explained to the petitioners could not amount by any stretch of imagination to issue to the petitioners a notice to show cause as to why a bond should not be executed by them to maintain peace."

17. It is well settled that the proceedings under Section 107 Cr.P.C. is not to be initiated only upon the basis of the report of the police or the statement of police officer. The Magistrate is under a duty to conduct some enquiry to be

satisfied of the materials existing regarding the necessity of the proceeding under Section 107 Cr.P.C. That having not been done, the proceeding was initiated without competence.

18. In this case, admittedly, no such preliminary enquiry was conducted. Moreover, the counter of the respondent is silent about the conduction of preliminary enquiry. There was no valid basis to form opinion for initiation of proceeding under Section 107 Cr.P.C. against the petitioner in as much as the alleged incident referred to in the impugned order would establish neither breach of peace nor public tranquillity. More so, the respondent solely placed reliance on the police report would render the impugned order invalid as being hurriedly and mechanically.

19. It is also to be noted that simultaneous proceeding by the police and the respondent with reference to the same incident would amount to abuse of process of law.

20. There was no preliminary enquiry being conducted nor are there any adequate reasons spell out in the impugned proceeding to arrive at subjective satisfaction of the respondent necessitating to initiate such drastic proceedings which are in the nature of offending the personal liberty of the petitioner. Viewing the case on hand, the impugned proceeding is vitiated on the ground of non-application of mind, no preliminary enquiry being conducted, simultaneous proceeding by the police and the respondent, contrary to the mandatory requirements of law and failure to supply the documents relied on by the respondent to the petitioner.

21. In such view of the matter, this criminal original petition is allowed and the proceedings in M.C.No.2/2010/E, dated 31.05.2010 of the respondent is quashed insofar as the petitioner is concerned. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

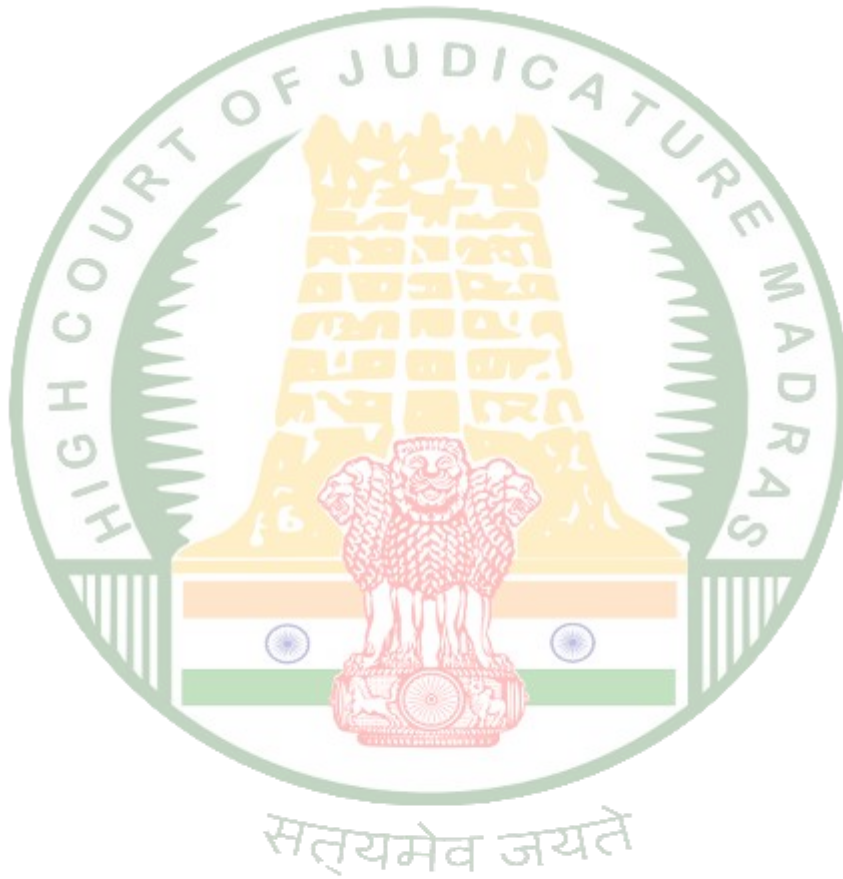
1.The Sub Divisional Executive Magistrate (RDO),
Dharapuram,
Tiruppur.

2.The Public Prosecutor,
High Court, Madras

+lcc to Mr.P.Muthukumarasamy, Advocate, S.R.No.18630

CRL.OP.No.18750 of 2010 and
M.P.No.1 of 2010

rrs 04/12/2018



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