



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2017

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

Cr1.O.P.(MD) No. 15727 of 2017
and
Cr1.M.P.(MD) No.10450 of 2017

S.Sathish Kumar ...Petitioner/Sole Accused
-Vs-

1.State Represented throughout
The Inspector of Police,
Thennilai Police Station,
Thennilai, Karur District.
(Crime No.124 of 2017) ...Respondent/Complainant

2.The Sub-Inspector of Police,
Thennilai Police Station,
Thennilai,
Karur District. ... Respondent/Defacto complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the impugned FIR in Cr.No.124 of 2017 on the file of the first respondent and quash the same as illegal.

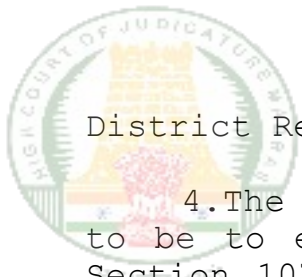
For Petitioner : Mr.R.Pandi Maharaja
For Respondents : Mr.A.Ramar
Additional Public Prosecutor

ORDER

The Criminal Original Petition has been filed to call for the records pertaining to the impugned FIR in Cr.No.124 of 2017 on the file of the first respondent and to quash the same.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3.It appears that the second respondent has lodged a complaint and the same was registered in Crime No.124 of 2017 for the alleged offence under Section 109 of Cr.P.C. The copy of the First Information Report reveals that the respondent has not registered the complaint for any cognizable offence. The copy of the First Information Report has been sent to the Executive Magistrate /



District Revenue Officer, Karur.

4. The purpose and object behind registration of crime is stated to be to enable the Executive Magistrate to initiate action under Section 107 of Cr.P.C. Since the First Information Report does not disclose any cognizable offence under any of the provisions of I.P.C., or any other statute, the First Information Report, as such is liable to be quashed. It is not necessary for the respondent to register the First Information Report in the manner, as it was done by the respondent police.

5. **Section 107 of Cr.P.C.**, reads as follows:

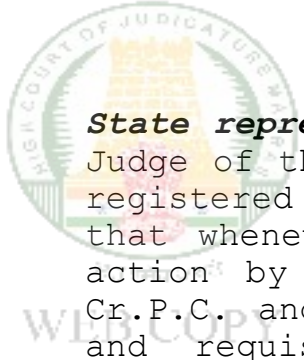
(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground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

6. Section 107 of Cr.P.C. empowers the Executive Magistrate to issue show cause notice as against any group or individual, to show cause why he or they should not be ordered to execute a bond with or without sureties for keeping peace for a period not exceeding one year, based on the information received by the police or other officials. Similar power is given to the Executive Magistrate under Section 109 Cr.P.C.

7. **Section 109 Cr.P.C.**, reads as follows:

When an Executive Magistrate receive information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate 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 his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.



State represented by Inspector of Police, wherein, a learned single Judge of this Court quashed the First Information Report, which was registered under Section 107 of Cr.P.C. It is stated in the order that whenever the police receives information, it may necessitate action by an Executive Magistrate under Section 107 to 110 of Cr.P.C. and that the same shall be entered in a separate register and requisition for action shall be made to the Executive Magistrate.

8.It is recorded, in the FIR that the complaint has been registered under Section 109 Cr.P.C. unless the FIR discloses a cognizable offence it cannot be registered. As per Section 154 Cr.P.C. only an information relating to a cognizable offence is required to be registered.

9.Since Section 109 Cr.P.C., does not speak about an offence a case cannot be registered either under Section 107 or Section 109 Cr.P.C. Section 109 Cr.P.C., deals with power of Executive Magistrate to require any person who is responsible for any breach of law and order problem, to show cause why he should not be ordered to execute security bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit. In this case, on the basis of some suspicion entertained by the second respondent a case has been registered under Section 109 Cr.P.C. When an information received by the police justify an action under Section 107 to 116 Cr.P.C., the police is required to pass on the information to the Executive Magistrate after registering the information in the separate register and the Executive Magistrate may on the basis of the information can initiate action by issuing show cause notice under Section 107 Cr.P.C., The learned single Judge of this Court has passed an order in CrI.O.P.(MD) No.7591 of 2017, dated 21.04.2017, holding that a complaint cannot be registered under Section 107 Cr.P.C., and the said decision is also applicable in this case where the case has been registered only under Section 109 Cr.P.C.

10.In the result, this Criminal Original Petition is allowed and the First Information Report in Crime No.124 of 2017 is quashed. Consequently, the connected miscellaneous petition is closed. However, it is open to the Executive Magistrate to initiate the proceedings under Section 109 Cr.P.C., according to law.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar

To

1.The Inspector of Police,
<https://hcservices.ecourts.gov.in/hcservices/>
 Thennilai Police Station,
 Thennilai Karur District.



2.The Sub-Inspector of Police,
Thennilai Police Station,
Thennilai, Karur District.

+1cc to Mr.R.PANDI MAHARAJA Advocate in SR. No. 88271

mm

JS/GT/SAR.1/8.12.2017/2P-4C

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