



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

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CRL.OP.(MD).No.16121 of 2017 and
CRL.M.P.(MD) Nos.10665 of 2017

Dhas @ Kumaradhas . . . Petitioner/Sole Accused
Vs.

1. The Inspector of Police,
Puthukadai Police Station,
Vilavancode Taluk,
Kanyakumari District. . . Respondent/Complainant

2. G.Robert Jain,
Sub Inspector of Police,
Puthukadai Police Station, Vilavancode Taluk,
Kanyakumari District.
(Crime No.85 of 2017) . . Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in Crime No.85 of 2017 on the file of the Puthukadai Police Station, Kanyakumari District and to quash the same.

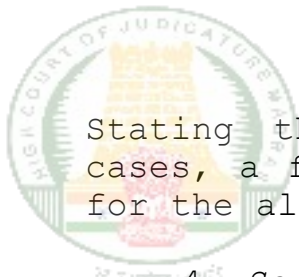
For Petitioner : Mr.S.C.Herold Singh
For Respondents : Mr.K.S.Durai Pandiyan,
Additional Public Prosecutor.

ORDER

This Criminal Original petition is filed for quashing the First Information Report in Crime No.85 of 2017 on the file of the Puthukadai Police Station, Kanyakumari District.

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

3. The petitioner appears to be a person who is involved in several criminal cases. It is stated that in Crime No.260 of 2009, a case was registered against the petitioner for the alleged offences under Sections 341, 294(b) and 324 of I.P.C. The petitioner has also involved in another case in Crime No.183 of 2012 which was registered for the alleged offences under Sections 294(b), 323 and 324 of I.P.C. The third case has been registered against the petitioner in Crime No.200 of 2012 for the alleged offences under Sections 341, 294(b), 324 and 506(ii) of I.P.C.



Stating that the petitioner has involved in several criminal cases, a further case has been registered in Crime No.85 of 2017 for the alleged offences under Section 110(e and f) of Cr.P.C.

4. Section 110 of Cr.P.C., reads as follows:-

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" 110. Security for good behaviour from habitual offenders - When (Substituted by Act 63 of 1980, S.2, for 'a Judicial Magistrate of the first class' [w.e.f. 23.09.1980]) (an Executive Magistrate) receives information that there is within his local jurisdiction a person who-

(a) is by habit a robber, house-breaker, thief or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under Section 489-A, Section 489-B, Section 489-C or Section 489-D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of -

(g) any offence under one or more of the following Acts, namely:-

(a) the Drugs and Cosmetics Act, 1940(23 of 1940);

(Substituted by Act 56 of 1974, S.3, Sch.II, for CL.(b) (w.e.f.20.12.1974) (b) the Drugs and Cosmetics Act, 1940(23 of 1940);

(c) the Employees' Provident Funds (Inserted by Act 56 of 1974, S.3 and Sch.II(w.e.f.20.12.1974) [and Family Pension Fund] Act, 1952 (19 of 1952) Now see the Employees' Provident Fund and Miscellaneous Provision Act, 1952(19 of 1952) ;

(d) the Prevention of Food Adulteration Act, 1954(37 of 1954);

(e) the Essential Commodities Act,



1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955) (Now see the Protection of Civil Rights Act, 1955 (22 of 1955)).

(g) the Customs Act, 1962 (52 of 1962); (The word "or" omitted by Act 25 of 2005, S.14 (w.e.f.23.6.2006)

(inserted by Act 25 of 2005, S.14 (w.e.f.23.6.2006) [(h) the Foreigners Act, 1946 (31 of 1946) ; or]

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of a adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit."

5. If a person is in the habit of committing any offence involving breach of peace or he abets the commission of any of the offence indicated therein can be asked to execute a Bond, with sureties for his good behaviour after issuing a Show Cause Notice by the Executive Magistrate. The power is also given only to the Executive Magistrate to issue Show Cause notice and then to proceed for bringing the person against whom the proceeding is initiated to execute a bond, with sureties for his good behaviour for such period not exceeding three years as the Magistrate thinks fit.

6. Section 110 of Cr.P.C., does not contemplate the registration of a First Information Report for any offence. Section 154 of Cr.P.C., also empowers the police to register the case only if the information of the complaint discloses a cognizable offence. This Court has already held with reference to Section 107 of Cr.P.C., that the complaint need not be registered under Section 107 of Cr.P.C., as Section 107 of Cr.P.C., empowers only the Executive Magistrate to issue Show Cause Notice and to proceed against the person who is likely to commit breach of peace or involved in any offence which is likely to cause breach of peace to execute a bond for the purpose of ensuring public peace and tranquillity. Similarly, the police cannot register the First Information Report or proceed further under Section 110 of Cr.P.C.



7. In that view of the matter, the Criminal Original petition is allowed and the First Information Report in Crime No.85 of 2017 on the file of the first respondent is quashed. However, liberty is given to the first respondent to refer the matter to concerned Executive Magistrate based on the criminal complaints registered against the petitioner earlier and the concerned Executive Magistrate also can initiate action under Section 110 of Cr.P.C., in case, there is a likelihood of breach of peace by the conduct of the petitioner. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Puthukadai Police Station,
Vilavancode Taluk,
Kanyakumari District.
2. G.Robert Jain,
Sub Inspector of Police,
Puthukadai Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.S.C.HEROLD SINGH,Advocate,SR. 89209

Cr1.O.P.(MD).No.16121 of 2017
24.11.2017

PMU

KK/JC/SAR 4/18.12.2017/ 4P- 5C/