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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.04.2017

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THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

Crl.O.P.(MD)No.4088 of 2017

and

CRL.M.P.(MD).Nos.2964 & 2965 2017

Ravindrakumar

... Petitioner / Respondent

Vs.

1. State represented by
The Inspector of Police,
Jaihindpuram Police Station,
Madurai City.
Crime No.268/2017. ... Respondent / Defacto Complainant
2. The Executive Magistrate
Cum Deputy Commissioner of Police,
Madurai. ... Respondents / Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in Na.Ka.No.1437/Ne.Se.Na & Ka.Tu.Aa/Ma.Maa/2017 Dated 20.03.2017 on the file of the Executive Magistrate cum Deputy Commissioner of Police, Law and Order, Madurai City.

For Petitioner	: Mr.J.M.Abdul Rahman
For Respondents	: Mr.A.P.Balasubramani
	Government Advocate (Crl.side)

O R D E R

The Sub-Inspector of Police, Jaihindpuram Police Station, Madurai City registered an F.I.R. in Crime No.268 of 2017 under Section 110(e) of Cr.P.C., against the petitioner and submitted the same before the Executive Magistrate cum Deputy Commissioner of Police, Madurai City. Based on which, the Executive Magistrate cum Deputy Commissioner of Police, Madurai City has initiated proceedings under Section 110 of Cr.P.C., and issued a notice dated 20.03.2017 to the petitioner calling upon to show cause on 31.03.2017, as to why he should not execute a bond with two sureties for Rs.1,00,000/- under Section 110 of Cr.P.C. Challenging which, the petitioner is before this Court.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side). Mr.A.Ganesan, the Special Sub-Inspector of Police, B6/Jaihindpuram Police Station (Law and Order) Madurai City is present.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Mr.J.M.Abdul Rahman, the learned counsel for the



petitioner submitted that an F.I.R. under Section 110 of Cr.P.C., cannot be registered by the Sub-Inspector of Police and that an action under Section 110 of Cr.P.C., can be initiated only by the Executive Magistrate. That apart, he submitted that even in the F.I.R. in crime No.268 of 2017 that has been registered on the complaint given by Sub-Inspector of Police, the minimum ingredients of the provision of Section 110 of Cr.P.C., is not available. Therefore, the Executive Magistrate cum Deputy Commissioner of Police, Madurai City has no jurisdiction to act on the same.

4. Mr.A.P.Balasubramani, learned Government Advocate (Crl.side) refuted the same.

5. This Court has given its anxious consideration to the rival submissions as regards the first point raised by Mr.J.M.Abdul Rahman, the learned counsel for the petitioner that an F.I.R. cannot be registered by the police under Section 110 of Cr.P.C., the same has been answered by Division Bench of this Court of course in a different context in M.Krishnamurthy and others vs. The Sub Divisional Magistrate cum Revenue Divisional Officer, Krishnagiri and another reported in 2017(1)L.W. Crl.149. The F.I.R. in Crime No.268 of 2017 is not one stricto sensu under Section 154 of Cr.P.C. The police only used the F.I.R. form for sending a report of breach of peace to the Executive Magistrate/Deputy Commissioner for initiating appropriate action under Section 110 of Cr.P.C. Therefore, the usage of the F.I.R. form will not mean that the Sub-Inspector of Police has registered a case of a cognizable offence in terms of Section 154 of Cr.P.C. Therefore, this Court is unable to agree with the submission of the learned counsel for the petitioner.

6. As regards the second submission, this Court carefully perused the averments made by the Sub-Inspector of Police in the F.I.R. in Crime No.268 of 2017. On reading of the same, the Sub-Inspector of Police stated that on prior information, when he went near Murugan Idly Shop in Jaihind Puram, he learnt that the petitioner was engaging in activities prejudicial to maintenance of peace in the area. Apart from this averment, there is no other overt act attributed to the petitioner. The averments on the face of it appear to be hearsay. If the Sub-Inspector of Police has seen the petitioner doing any act that is prejudicial to the maintenance of peace, he should also state so in the report. For taking action under Section 110(e) of Cr.P.C., against the person, the said person must have habitually commits or attempts to commit the offence for invoking under Section 110 (e) of Cr.P.C., The following requirements shall be fulfilled viz.,

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



7. There is absolutely no material in the F.I.R. in Crime No.268 of 2017 satisfying the requirements of Section 110(e) and therefore, the Execution Magistrate/Deputy Commissioner lacks jurisdiction to act on such a blank report of the Sub-Inspector of Police.

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8. In the result, this Criminal Original Petition is allowed. As and when there are materials against the petitioner for invoking jurisdiction under Section 110 Cr.P.C., it is always open to the police to initiate action in accordance with law. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Jaihindpuram Police Station,
Madurai City.
2. The Executive Magistrate
Cum Deputy Commissioner of Police,
Madurai.

+1cc to M/S.J.M.Abdul Rahman, Advocate SR.No.50839

Cr1.O.P.(MD)No.4088 of 2017
07.04.2017

JM/SKN RSK/SAR 2/19.04.2017/3P/4C