

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CrI.O.P. No.8814 of 2012

and

M.P. No.1 of 2012

1.Rangasamy
2.Balamurali
3.Ragavan
4.Annamalai Doss
5.Ranga Ramanujam Petitioners

Vs.

State represented by the
Inspector of Police,
Pallapatti P.S.
(Cr. No.289 of 2012) ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records and quash the proceedings in M.C. No.114 of 2012 on the file of learned Sub-Divisional and Executive Magistrate-cum-Revenue Divisional Officer, Salem as an abuse of process of court.

For Petitioners : Mr.S.K.V.Sridharan

For Respondent : Mr.T.Shanmugarajeswaran,
Government Advocate (CrI.Side)

ORDER

The petitioners have challenged the summons issued by the Executive Magistrate/Revenue Divisional Officer, Salem dated 05.03.2012.

2.The Inspector of Police, Pallapatti Police Station, Salem District has registered a First Information Report in Crime No.289 of 2012 against the petitioners herein under Section 107 of Cr.P.C. on the ground that there is a likelihood of breach of peace, on account of the offences under Sections 468, 386 and 120 (B) I.P.C. allegedly committed by the petitioners. The Revenue Divisional Officer after receiving the FIR had issued a notice under Section 107 of Cr.P.C to the petitioners to appear before him on 05.03.2012 for an enquiry.

3.Mr.S.K.V.Sridharan, learned counsel appearing for the petitioners contended that the Revenue Divisional Officer, Salem, before issuing the summons has not applied his mind and without passing a speaking order, has issued the present summons and therefore, he prayed for quashing the summons issued by the Revenue Divisional Officer, Salem. He also placed reliance on the decision of this Court in M.Krishnamurthy and others Vs. The Sub Divisional Magistrate cum Revenue Divisional Officer, Krishnagiri and another reported in 2017-1-L.W. (Cr1.) 149 (D.B). In the said decision, the Hon'ble Division Bench of this Court has clearly laid down that the opinion under Section 107 of Cr.P.C is a subjective opinion based on the information laid before the Executive Magistrate and that it cannot be subjected to judicial review. It is further laid down that the law does not contemplate a preliminary enquiry under Section 111 of Cr.P.C. to find out the truth of the information. In the instant case, the Executive Magistrate cum Revenue Divisional Officer has not come to any conclusion and he has merely issued a notice to the petitioners herein to appear before him on 05.03.2012. Section 116 (1) of Cr.P.C. requires the Executive Magistrate to inquire into the truth of the information placed before him. It is therefore clear that a probe into the truth of the information placed before the Magistrate is contemplated only upon the commencement of an enquiry under Section 116, and not before. It is further held in the said decision that Section 111 of the Cr.P.C. is in pari materia with Section 112 of 1898 Code and thus it is beyond any cavil that Section 111 of the Code alone contemplates an order to be passed by the Magistrate and not under Section 107 Cr.P.C. The Magistrate is not required to record anywhere his subjective opinion because at the outset Section 107 itself does not mandate so.

4. The Hon'ble Division Bench of this Court had also considered the decision rendered by the Hon'ble Supreme Court in Union of India Vs.Vicco Laboratories reported in (2007) 13 SCC Page 270, in which, it has been held as follows:

"31. Normally, the writ Court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule."

5.Since in the instant case, the Executive Magistrate has not come to any conclusion, the notice issued by the Executive Magistrate cannot be set aside at the threshold level. Therefore, I do not see any reason to allow this petition. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rkp

To

1. The Sub-Divisional and Executive Magistrate- cum Revenue Divisional officer, Salem.
2. The Inspector of Police, Pallapatti Police Station, Pallapatti, Salem District.
3. The Public Prosecutor, Madras High Court, Madras.

Crl.O.P. No.8814 of 2012
and
M.P. Nos.1 & 2 of 2012

TR(11/06/2018)

सत्यमेव जयते

WEB COPY