



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.RC.(MD)No.271 of 2018

and

Crl.M.P.(MD).No.3756 of 2018

Andrews Masilamani

: Petitioner

Vs.

1. The Sub Divisional Magistrate and
Sub-Collector, Thoothukudi.

2. Selvam City Residential
Welfare Association,
Represented by its Secretary M.Gopal.

: Respondents

(Respondent No.2 is impleaded as per the
order of this Court dated 06.09.2018
in Crl.M.P.(MD).No.4479 of 2018 in
Crl.RC.(MD).No,271 of 2018)

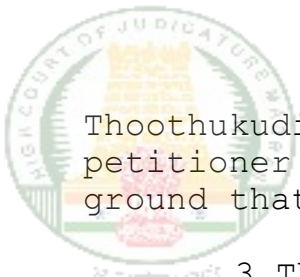
PRAYER: Criminal Revision Petition filed under Section 397 read with
401 of Criminal Procedure Code to call for the records of the
learned Sub-Divisional Magistrate and Sub-Collector, Thoothukudi in
Roc.No.B1/4227/2017 dated 16.04.2018 and to set aside the same.

For Petitioner	: Mr.S.Deenadhayalan
For R1	: Mr.A.Robinson
	Government Advocate (Crl. side)
For R2	: Mr.A.Thiruvadikumar

JUDGMENT

Heard the learned counsel appearing for the petitioner and
the learned Government Advocate (Crl. side) appearing for the first
respondent and the learned counsel appearing for the second
respondent.

2.This Revision petition is directed against the order passed
by the learned Sub Divisional Magistrate and Sub-Collector,



Thoothukudi, under Section 133 Cr.P.C., directing the revision petitioner herein, to seize the operation of his Saw Mill on the ground that it caused nuisance, noise pollution and dust pollution.

3. The points canvassed in the Revision Petition is that the learned Executive Magistrate had passed an order under Section 138 Cr.P.C. He has to follow the procedure contemplated for trial of summons case whereas, the learned Executive Magistrate, except recording the statement of the revision petitioner, sent a show-cause notice to the revision petitioner and has given an opportunity either to cross-examine the witness or to put forth this version through witnesses and documents, which is an essential ingredient under Section 254 Cr.P.C for trial of summons case by the learned Magistrate under Chapter 20 of the Code of Criminal Procedure.

4. The records in this case indicates that the trial has not been conducted as per summons case procedure. Section 133 of Code of Criminal Procedure empowers the learned District Magistrate or the learned Sub Divisional Magistrate or any other learned Executive Magistrate empowered by the State to remove any unlawful obstruction or nuisance or conduct of any trade or nuisance or conduct of any unlawful obstruction or injuries to the health or physical comfort community, while exercising this power, the said Authority has to follow the summons and trial procedure as per Section 138 of the Code of the Criminal Procedure which reads as under:---

138. Procedure where he appears to show cause

(1) *If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.*

(2) *If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.*

(3) *If the Magistrate is not so satisfied, no further proceedings shall be taken in the case.*

5. Obviously, in this case, the said procedure is not followed. Hence, the impugned order is liable to be set aside. Accordingly, the order passed by the learned Sub-Divisional Magistrate and Sub-Collector, Thoothukudi, in Roc.No.B1/4227/2017, dated 16.04.2018, is set aside and the revision case is allowed. The respondent is hereby directed to conduct the *de-novo* trial as per the procedure contemplated under Section 138 of the Code of Criminal Procedure and pass appropriate orders within a period of 45 days from the date of receipt of a copy of this order. If the revision petitioner fails to co-operate for the enquiry, the respondent is at liberty to pass appropriate order recording his



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non-cooperation. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Sub Divisional Magistrate and
Sub-Collector, Thoothukudi.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.R.VIJAYAKUMAR, ADVOCATE IN SR No. 89802
+ 1 CC TO Mr.A.THIRUVADI KUMAR, ADVOCATE IN SR No. 89675

TSG

TE/SV/SAR-2 : 12/11/2018 : 3P/5C

Judgment made in
Cr1.RC.(MD)No.271 of 2018
09.10.2018