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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.09.2018

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THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.(MD)No.16220 of 2018
and
Crl.M.P.(MD)No.7193 of 2018

1.Mohammed Ameen
2.Ahamed Aslam ... Petitioners

Vs

1.The second Class Executive Magistrate cum Tahsildar,
Ramanathapuram,
Ramanathapuram District.

2.State represented by
The Inspector of Police,
Kenikkarai Police Station,
Ramanthapuram District. ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records relating to the impugned summons issued by the first respondent vide M.C.No.൩3/2018, dated . 07.2018 signed on 12.07.2018 on the file of the first respondent and quash the same.

For Petitioners : Mr.M.Chinna Thambi

For Respondents : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.side)

ORDER

This present petition has been filed challenging the impugned summon issued by the first respondent under Section 113 of Cr.P.C.

2.The learned counsel for the petitioners would submit that if the proceeding under Section 107 of Cr.P.C is initiated, a show cause notice under Section 111 of Cr.P.C should be issued by the Executive Magistrate after satisfying himself that sufficient grounds are available to proceed further under Section 107 of Cr.P.C. Even without issuing the show cause notice under Section 111 of Cr.P.C, the first respondent has directly proceeded to issue the summon under Section 113 of Cr.P.C.

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3.The learned counsel for the petitioners would submit that such a summon can be issued only in a case where a person has not appeared before the Court after issuance of the show cause notice under Section 111 of Cr.P.C.

4.The learned Government Advocate (Crl.side) was directed to take instructions in this case and he was not able to produce any material to show that the first respondent has issued notice under Section 111 of Cr.P.C before proceeding to issue the impugned summon under Section 113 of Cr.P.C.

5.This Court is of the considered view that the impugned summon issued by the first respondent is illegal. The first respondent in the course of proceeding with an enquiry under Section 107 of Cr.P.C, has to issue a show cause notice under Section 111 of Cr.P.C after satisfying himself that there are grounds to proceed further against the petitioners. Without issuance of the show cause notice, the first respondent ought not to have issued a summon under Section 113 of Cr.P.C.

6.Accordingly, the summon issued by the first respondent is hereby quashed. If the first respondent wants to proceed further with the enquiry under Section 107 Cr.P.C, the same shall be done only after affording an opportunity to the petitioners by issuing the necessary show cause notice under Section 111 of Cr.P.C. Accordingly, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The second Class Executive Magistrate cum Tahsildar,
Ramanathapuram, Ramanathapuram District.

2.The Inspector of Police, Kenikkarai Police Station,
Ramanthapuram District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.R.MURUGAN, Advocate, SR.No.84515

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