

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6387 OF 2018

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in M.C.No.1 of 2018 issued by the second respondent/Sub-Divisional Magistrate & Revenue Divisional Officer, Guntur, arising out of Crime No.83 of 2018 of Sattenapalli Police Station, Guntur District.

The petitioner received summons to appear before the second respondent to answer charge under Section 107 Cr.P.C at 10:30 a.m on 28.04.2018. Accordingly, the petitioners appeared before the second respondent at 10:30 a.m on 28.04.2018 on the dates fixed in the summons. But, the second respondent was not present, the petitioners approached the persons present in the offence and requested for papers concerning the summons. The person replied that there are no papers to be supplied to the petitioners and asked the petitioners to wait, so that another date will be given for the appearance of the petitioners. However, after waiting for longtime, the petitioners understood that there is no material to be given to the petitioners and they are summoned without following proper procedure. It is submitted that the copy of the summons issued on behalf of the second respondent are filed along with the application and it reads that M.C.No.1 of 2018 arises out of Crime No.83 of 2018 of Sattenapalli Police Station, Guntur District.

The main ground urged before this Court is that, issuance of summons without, show cause notice is illegal and crime is pending on the file of Station House Officer, Sattenapalli Police Station, Guntur District.

It is submitted that initiation of proceedings under Section 107 Cr.P.C contemplates breach of peace and disturbance of public tranquility and if the executive magistrate on receipt of such information opines that there is sufficient ground for proceeding, he may require the persons to show cause as to why the persons should not be ordered to execute a bond with or without sureties for keeping peace for such period, not extending one year as he thinks fit. Further, before issuing summons to the petitioner, the executive magistrate shall pass an order in terms of Section 111 Cr.P.C setting forth the substance of the information and recording the satisfaction about the necessity of issuing summons seeking execution of bond for keeping peace. But, such procedure is followed by the second respondent and in support of his contention, Sri Raja Reddy Koneti placed reliance on the judgment of the Apex Court in **Challa Somaiah & Others v. State of A.P**¹ and prayed to quash the proceedings.

Whereas, learned Public Prosecutor supported issuance of summons to these petitioners which are impugned in this petition. As per the material produced before this Court, M.C.No.1 of 2018 pertaining to Crime No.83 of 2018 was registered under Section 107 Cr.P.C on the file of Sattenapalli police Station and summons were issued to these petitioners to appear before the second respondent. According to the petitioners, issuance of summons arises only after recording satisfaction and in the summons, the petitioners are required to attend before the Sub-Divisional Magistrate to answer a charge under Section 107 Cr.P.C.

¹ 1978 (2) ALT 432

Section 107 Cr.P.C deals with security for keeping the peace in other cases and according to it,

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond '[with or without sureties] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

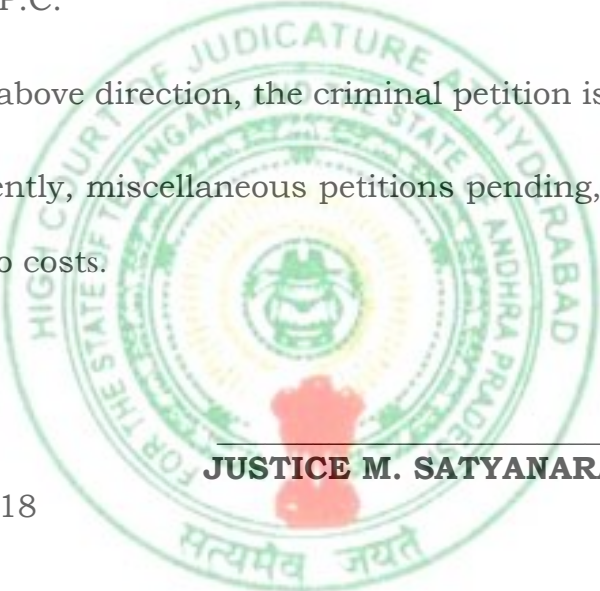
(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

Instead of issuing show cause notice, summons were issued calling upon the petitioners to appear before the second respondent to answer a charge under Section 107 Cr.P.C. No order has been passed so far under Section, 107, 108 or 109 Cr.P.C to pass an order under Section 111 Cr.P.C. It is the contention of the learned counsel for the petitioners that, no such proceedings are pending and no papers were served to these petitioners, but issued summons without any jurisdiction. Issuance of summons under Section 107 Cr.P.C is a serious illegality and at best, if any, proceedings are pending on receipt

of any information, about the breach of peace likely to be caused, the Sub-Divisional magistrate is only competent to issue show cause notice, but not summons. Therefore, the summons issued to these petitioners is illegal and contrary to Section 107(1) Cr.P.C. Hence, the summons in M.C.No.1 of 2018 issued by the second respondent/Sub-Divisional Magistrate & Revenue Divisional Officer, Guntur, arising out of Crime No.83 of 2018 of Sattenapalli Police Station, Guntur District, are hereby quashed. However, the second respondent is at liberty to follow the procedure contemplated under Section 107 Cr.P.C, if any proceedings are pending against these petitioners under Section 107 Cr.P.C.

With the above direction, the criminal petition is allowed.

Consequently, miscellaneous petitions pending, if any, shall also stand closed. No costs.



JUSTICE M. SATYANARAYANA MURTHY

Dated:20.06.2018

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