

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.04.2019
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.No.8096 of 2019
and Crl.M.P.No.4368 of 2019

K.Natarajan

... Petitioner

Vs

1.The Deputy Superintendent of Police,
Madhavaram,
Chennai

2.The Inspector of Police,
M-4, Redhills Police Station,
Redhills, Chennai-52

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of the impugned summon issued in M4 PS S.No.18/2019 dated 17.03.2019 on the file of the second respondent.

For Petitioner : Mr.G.Mohana Krishnan

For Respondents: Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to quash the summon issued by the second respondent in M4 PS S.No.18/2019 dated 17.03.2019.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

3.It is seen that impugned notice issued under Section 110 of Cr.P.C., without following the procedure contemplated under Section 107(1) of Cr.P.C. Further the impugned summon issued without passing any order under Section 111 of Cr.P.C., and directly issued summon under Section 110 of Cr.P.C. It is relevant to extract the provisions under Section 113 of Cr.P.C.

"113. Summons or warrant in case of person not so present :- If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is

to bring him before the Court: Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the Commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Comments :- It is as clear as day that before taking steps for arrest the Magistrate must have reasons to fear the Commission of breach of the peace and it must appear to him that such breach of peace cannot be prevented otherwise than by immediate arrest of the alleged person. It is incumbent upon the Magistrate to record an order in writing showing satisfaction for the steps taken under the proviso to section 113 of the Criminal Procedure Code; *Dibakar Naik v Puspallata Patel*, (1997) 3 Crimes 107 (Ori) "

Therefore, the impugned summon cannot be sustained and it is clear abuse of process of law. However, the second respondent is at liberty to proceed afresh against the petitioner following the procedure contemplated under Section 111 of Cr.P.C., in accordance with law.

4. Accordingly, this Criminal Original Petition is allowed and the impugned summon issued by the second respondent herein in M4 PS S.No.18/2019 dated 17.03.2019 is quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lok

To

1. The Deputy Superintendent of Police,
Madhavaram,
Chennai

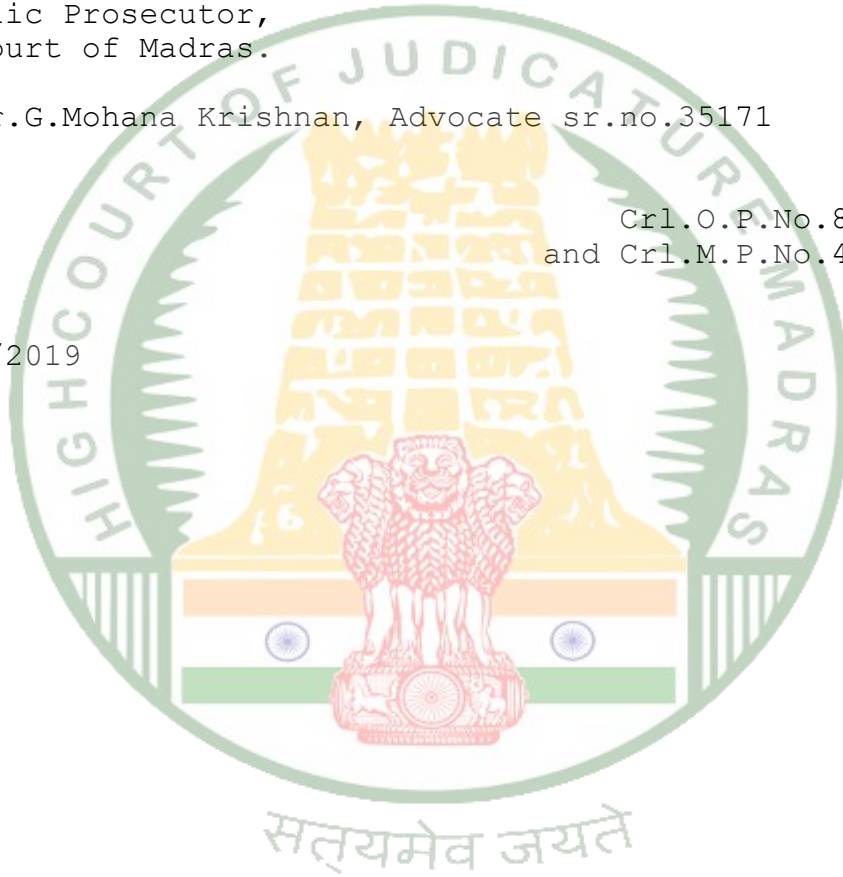
2.The Inspector of Police,
M-4, Redhills Police Station,
Redhills, Chennai-52

3.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.G.Mohana Krishnan, Advocate sr.no.35171

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