IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.8524 of 2019
and
Crl.M.P.Nos.4532, 4533 of 2019

Ramakrishnan ... Petitioner

Vs

1.The Executive Magistrate -cum-
Deputy Commissioner of Police,
Triplicane,
Chennai District -600 002.

2.A.Sivasankar,
The Sub Inspector of Police,
F-2 Egmore Police Station,
Egmore, Chennai 600 008. ... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the impugned summon issued by the first respondent herein in Na.Ka.No.Nir.Se.Nadu.Ka.Thu.Aa/Triplicane District/2019, dated 25.03.2019 and quash the same.

For Petitioner : Mr.G.Karthikeyan

For R1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to for the records pertaining to the impugned summon issued by the first respondent herein in Na.Ka.No.Nir.Se.Nadu.Ka.Thu.Aa/Triplicane District/2019, dated 25.03.2019 and quash the same.

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

3.It is seen that impugned notice issued under Section 113 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 113 of Cr.P.C. It is

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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 Puspalata Patel,(1997) 3 Crimes 107 (Ori) "

Therefore, the impugned summon cannot be sustained and it is clear abuse of process of law. However, the first 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 first respondent herein in Na.Ka.No.Nir.Se.Nadu.Ka.Thu.Aa/Triplicane District/2019, dated 25.03.2019 is quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rna

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To

1.The Executive Magistrate -cum-
  Deputy Commissioner of Police,
  Triplicane District,
  Chennai 600 002.

2.The Sub Inspector of Police,
  F-2 Egmore Police Station,
  Egmore, Chennai 600 008.

3.The Public Prosecutor,
  High Court, Madras.

+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.31211

Crl.O.P.No.8524 of 2019
and
Crl.M.P.Nos.4532, 4533 of 2019

RRS(10/05/2019)

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