

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.19508 and 19511 of 2019
in Crl.M.P.Nos.9995, 9996, 9992 and 9993

1.K.Devamani
2.P.Veeramani

... Petitioners in Crl.O.P.No.19508 of 2019

1.Senthamizh Selvam
2.Anbazhagan

.... Petitioners in Crl.O.P.No.19511 of 2019

-Vs-

1.The State represented by
The Station House Officer,
Thirunallar Police Station,
Thirunallar.

2.The Sub Divisional Magistrate,
Karaikal Respondent in both Crl.O.Ps

**(R2 is Suo motu impleaded as per
Common order in Crl.OP.Nos.19508
and 19511/2019, dated 22/07/2019)**

Common Prayer: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records in M.C.No.37 of 2019, on the file of the learned Sub Divisional Magistrate, Karaikal, Puducherry and quash the same as against the petitioner.

For Petitioners
in both Crl.O.Ps : M/s.R.Vivekananthan

For Respondent : Mr.D.Bharatha Chakravarthy
in both Crl.O.Ps Public Prosecutor(Puducherry)

COMMON ORDER

The learned Public Prosecutor (Puducherry) took notice on behalf of the respondent police and on the consent of both the parties, this Criminal Original Petition is taken up for final hearing.

2. These Criminal Original Petitions have been filed challenging the proceedings initiated by the Sub Divisional Magistrate, Karaikal, made in M.C.No.37 of 2019.

3. This Court Suo Motu impleads the Sub Divisional Magistrate, Karaikal, as a respondent and the said Sub Divisional Magistrate, Karaikal, shall be the second respondent in this case.

4. It is seen from records that the respondent police registered an FIR in Crime No.39 of 2019 for offences under Sections 143, 283 r/w 149 of IPC. Proceedings under Section 107 of Cr.P.C were initiated and on 22.03.2019, the accused persons were summoned by the Sub Divisional Magistrate, Karaikal and were asked to execute an interim bond for a sum of Rs.1,00,000/- (Rupees One Lakh Only) along with sureties for a period of one year. The accused persons executed a bond on 25.03.2019 for a sum of Rs.1,00,000/- (Rupees One Lakh Only) along with sureties. This bond was executed pending the proceedings under Section 116(3) of Cr.P.C. The petitioners in CrI.O.P.No.19511 of 2019, stood sureties for the bond executed by the petitioners in CrI.O.P.No.19508 of 2019. Subsequent to the execution of the bond, the proceedings were suspended and the enquiry under Section 116 of Cr.P.C was not completed. When this interim bond was in force, it is alleged that the accused persons indulged in another crime on 26.06.2019 and an FIR was registered on 27.06.2019 in Crime No.117 of 2019 against the petitioners in CrI.O.P.No.19508 of 2019 and other accused persons.

5. Subsequent to the registration of the FIR, the respondent police filed a report before the Sub Divisional Magistrate, Karaikal, under Section 122 of Cr.P.C to the effect that the accused persons, during the subsistence of the interim bond have violated the terms of the bond and committed another offence in the above said crime number. On receipt of the said report sent by the respondent police, the Sub Divisional Magistrate, Karaikal, took cognizance and has proceeded to initiate proceedings under Section 122 (1) (b) of Cr.P.C for the forfeiture of the bond and for the arrest and detention of the accused persons. This proceeding has been challenged independently by the accused persons as well as the persons, who stood as sureties, for the bond executed by the accused persons.

6. The learned counsel for the petitioners submitted that the enquiry under Section 116 of Cr.P.C is pending and no final orders have been passed under Section 117 of Cr.P.C and therefore, the proceedings initiated by the Sub Divisional Magistrate, Karaikal under Section 122 of Cr.P.C., is not maintainable and it is without jurisdiction. The learned

counsel, by bringing to the attention of this Court the impugned proceedings, submitted that even from the record of proceedings, it is clear that the accused persons had executed bond only under Section 116 (3) of Cr.P.C, as an interim measure pending the enquiry under Section 116 of Cr.P.C. For this purpose, the learned counsel brought to the notice of this Court, para Nos.5 and 8 of the impugned Proceedings.

7. The learned counsel for the petitioners, therefore, concluded his arguments submitting that without a final order being passed under Section 117 of Cr.P.C, after conducting an enquiry under Section 116 of Cr.P.C, the Sub Divisional Magistrate, Karaikal, lacks jurisdiction to initiate proceedings against the accused persons under Section 122 (1) (b) of Cr.P.C.

8. Per contra, the learned Public Prosecutor appearing on behalf of the respondents submitted that there was no necessity for the Sub Divisional Magistrate, Karaikal, to pass an order under Section 117 of Cr.P.C, since the accused persons themselves have voluntarily executed bond for keeping peace along with sureties and therefore there was no need to conduct an enquiry under Section 116 of Cr.P.C and pass final orders under Section 117 of Cr.P.C. The learned Public Prosecutor submitted that the petitioners have violated the conditions of the bond by committing another crime during the subsistence of the period of bond and therefore, the Sub Divisional Magistrate, Karaikal, had the power and jurisdiction for invoking section 122(1) (b) of Cr.P.C. The learned counsel submitted that there is no illegality in the proceedings initiated by the Sub Divisional Magistrate, Karaikal.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. It is an admitted case that proceedings were initiated under Section 116 of Cr.P.C against the accused persons/petitioners in CrI.O.P.No.19508 of 2019. The petitioners were directed to execute an interim bond for a sum of Rs.1,00,000/- (Rupees One Lakh Only) along with sureties for a like sum to maintain their good behaviour for a period of one year from the date of executing the interim bond. This fact becomes very clear on a reading of para No.5 of the proceedings. It is also clear from a reading of this paragraph that the proceedings were kept suspended. The respondent police have proceeded to register another FIR in Crime No.117 of 2019 against the accused persons for an alleged offence under Sections 448, 324, 323, 294(b), 506(ii) of IPC r/w 34 of IPC. This was brought to the notice of the Sub Divisional Magistrate, Karaikal, by means of a special report.

11. The Sub Divisional Magistrate, Karaikal, after taking into consideration, the special report submitted by the respondent police, has proceeded to initiate proceedings under Section 122 (1) (b) of Cr.P.C.

12. The scheme of Chapter VIII deals with security for keeping the peace and good behaviour. It lays down the procedure to be followed by the Sub Divisional Magistrate, Karaikal, before proceeding further to take action under Section 122 (1) (b) of Cr.P.C. Upon initiating proceedings under Section 107 of Cr.P.C, the concerned Executive Magistrate will issue a Show Cause Notice to the concerned accused persons by making an order in writing, setting forth the substance of information received, the amount of bond to be executed, the term for which it is to be in force etc. and this shall be served upon the accused person.

13. Thereafter, an enquiry is contemplated under Section 116 of Cr.P.C. During the pendency of the enquiry, if the Executive Magistrate considers that interim measures are necessary for the prevention a breach of peace or disturbance of the public tranquility, he can direct the person concerned in respect of whom an order has been passed under Section 111 of Cr.P.C., to execute a bond for keeping peace or maintaining good behaviour. This is purely by way of an interim measure, pending the enquiry under Section 116 of Cr.P.C.

14. Upon enquiry, as per the procedure contemplated under Section 116 of Cr.P.C, a final order shall be passed under Section 117 of Cr.P.C and it is upon passing such an order, the Executive Magistrate comes to a conclusion that it is necessary for keeping the peace or maintaining good behaviour. He will thereafter direct the concerned persons to execute a bond with or without sureties.

15. This bond for good behaviour or keeping the peace is executed for a particular period. If during this period, the person who had given security commits any offence and thereby commits breach of conditions of the bond, the Executive Magistrate, is entitled to initiate proceedings under Section 122 (1) (b) of Cr.P.C and after conducting an enquiry, is entitled to forfeit the bond and detain the concerned accused persons in prison.

16. In the present case, it is seen from records that the proceedings are only at the stage of enquiry under Section 116 of Cr.P.C and an interim bond has been executed by accused persons along with sureties under Section 116(3) of Cr.P.C. The final orders have not been passed under Section 117 of Cr.P.C. It is very clear from the reading of the very proceedings

himself. While so, based on the special report given by the respondent police, the Sub Divisional Magistrate, Karaikal, has proceeded to initiate proceedings under Section 122(1) (b) of Cr.P.C. These proceedings, in the considered view of this Court, is in violation of the procedure contemplated under the Criminal Procedure Code and is one without jurisdiction, since the Sub Divisional Magistrate, Karaikal, gets the power only after final orders is passed under Section 117 of Cr.P.C.

17. In the result, the proceedings initiated by the Sub Divisional Magistrate, Karaikal, in M.C.No.37 of 2019 is hereby set aside. The Sub Divisional Magistrate, Karaikal, is hereby directed to proceed further with the enquiry under Section 116 of Cr.P.C in accordance with the procedure contemplated under the said provision and he shall pass final orders within a period of six weeks from the date of receipt of copy of this order. It goes without saying that this order can be passed only after affording opportunity to the accused persons.

18. In the result, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sub Divisional Magistrate, Karaikal,
Puducherry.

2.The Station House Officer,
Thirunallar Police Station,
Thirunallar.

3.The Public Prosecutor,
High Court of Madras.

+2cc to Mr.R.Vivekananthan, Advocate Sr.Nos.62581 & 62582
+1 cc to The Public Prosecutor (Puducherry), Sr.No.62954

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AKM/ 29.08.19/ 5P-7C /