



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2019

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WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P.(MD).No.11465 of 2019

and

CrI.M.P.(MD).Nos.7191 and 7192 of 2019

Jeyaprakash

: Petitioner

Vs.

The State represented by

1.The Second Grade Administrative Magistrate/Tahsildar,
Ramanathapuram District.

2.The Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.

: Respondents

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code to call for the records made in M.C.No.(A3)35/2019, dated 06.08.2019 on the file of the first respondent and quash the same.

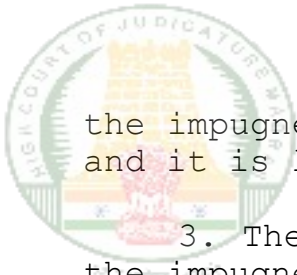
For Petitioner : Mr.M.Kaliraj

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

O R D E R

This criminal original petition has been filed challenging the summon issued by the Second Grade Executive Magistrate/Tahsildar, Ramanathapuram District, under Section 113 of Cr.P.C., against the petitioner, dated 06.08.2019.

2. According to the petitioner, now, the Executive Magistrate/Tahsildar, Ramanathapuram District has issued an impugned summon under Section 113 of Cr.P.C., asking the petitioner to appear for an enquiry on 16.08.2019, without following the procedure contemplated under Section 111 of Cr.P.C. for initiating proceedings under Section 107 of Cr.P.C. The first respondent / the Executive Magistrate said to have issued the summon without following the procedure under Section 111 of Cr.P.C. According to the petitioner, the first respondent has to issue show cause notice under Section 111 of Cr.P.C. and only thereafter, if the petitioner failed to appear, he can issue summons under Section 113 of Cr.P.C. Therefore,



the impugned summon has been issued in total non-application of mind and it is liable to be dismissed.

3. The learned Government Advocate (Crl.side) would submit that the impugned summon has been issued only directing the petitioner to appear for an enquiry and even though the summon has been issued under Section 113 of Cr.P.C., in fact, it is only the notice issued under Section 111 of Cr.P.C., by the Executive Magistrate and submit his objections.

4. I have considered the rival submissions and perused the materials available on record.

5. The impugned summon said to have been issued by the first respondent / the Executive Magistrate under Section 113 of Cr.P.C., for initiating proceedings against the petitioner under Section 107 of Cr.P.C. If the Executive Magistrate acting under Section 107 of Cr.P.C., should issue a show cause notice under Section 111 of Cr.P.C., setting forth the substance of the information received by him and the amount of the bond to be executed and also the duration for which the bond to be in force and after issuing show cause notice, if the person failed to appear for enquiry, then, he can issue a summons under Section 113 of Cr.P.C. But, in the instant case, without issuing any show cause notice under Section 111 of Cr.P.C., the Executive Magistrate directly issued notice under Section 113 Cr.P.C. Hence, the impugned order is liable to be set aside.

6. Accordingly, the criminal original petition is allowed and the impugned order passed by the Second Grade Executive Magistrate/Tahsildar, Ramanathapuram District, dated 06.08.2019, is set aside. However, the first respondent is at liberty to issue a fresh notice to the petitioner under Section 111 of Cr.P.C., and proceed further. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Second Grade Executive Magistrate/Tahsildar,
Ramanathapuram District.

2.The Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.



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

+1cc to Mr.M.Kaliraj,Advocate, SR.No.82565

Order made in
CRL.O.P. (MD) .No.11465 of 2019
Dated: 19.08.2019

akv

JMN(20.09.2019) 3P : 5C