



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.13863 of 2019

and

Crl.M.P.(MD)Nos.8469 & 8470 of 2019

WEB COPY

1. R. Mariyyadhass
2. Kings Raja
3. R.Rajendran
4. Nikashan
5. Arul S. Babai
6. Jegan Alexandar

... Petitioners

-Vs-

The Executive Magistrate Cum Sub Collector,
Pathmanabapuram,
Kanyakumari District,
Kanyakumari.

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the impugned summon in A2/MC 23/2019 dated 21.08.2019 on the file of the Respondent and quash the same as illegal as against the petitioner alone.

For Petitioners	: Mr.T.Lajapathi Roy
For Respondent	: Mr.K.Suyambulinga Bharathi Government Advocate(crl.side)

ORDER

This Criminal Original Petition has been filed to quash the impugned summon in A2/MC 23/2019 dated 21.08.2019 on the file of the Respondent, thereby, calling upon the petitioner to execute the bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) for the period of one year.

2.Heard both sides.

3. The impugned notice issued by the respondent, under Section 113 Cr.P.C., without following the procedure contemplated under Section 107 (1) Cr.P.C. Accordingly, the respondent ought to have issued and passed an order under Section 111 Cr.P.C. and thereafter, he passed an order under Section 113 Cr.P.C. Admittedly the respondent, without passing any order under Section 111 Cr.P.C., directly issued summon under Section 113 Cr.P.C. It is relevant to extract the provision under Sections 111 and 113 Cr.P.C., as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



111. Order to be made : When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required

.....

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

4. When a person received notice under Section 111 Cr.P.C. and thereafter, he failed to appear before the Authority, the Authority can issue summon under Section 113 Cr.P.C.

5. On perusal of records, no order has been passed under Section 111 Cr.P.C. by the respondent. Therefore, the impugned summon cannot be sustained as against the petitioner. Accordingly, this Criminal Original Petition is allowed and the impugned notice in A2/MC 23/2019, dated 21.08.2019, on the file of the respondent, is hereby quashed. However, the respondent is at liberty to proceed with a fresh enquiry following the procedure contemplated the provision under Section 111 Cr.P.C, against the petitioner, in accordance with law. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)



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TO

1.The Executive Magistrate Cum Sub Collector,
Pathmanabapuram,
Kanyakumari District,
Kanyakumari.

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

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-96781[F] dated
07/11/2019)

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MK (22.11.2019) 3P 4C