



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.O.P. (MD) .No.11306 of 2017

and

CrI.M.P. (MD) No.7766 of 2017

P.Chandran

...Petitioner

vs.

1) The Tahsildar/ Second class Executive Magistrate,
Rameshwaram Taluk Office,
Rameshwaram,
Ramanathapuram District.

2) The Inspector of Police,
Thangachimadam Police Station,
Thangachimadam, Rameshwaram Taluk,
Ramanathapuram District.

3) Lakshmanan
Special Branch Sub Inspector,
Rameshwaram Police Station,
Ramanathapuram District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records relating to the impugned summon in M.C.No.52 of 2017 dated 19.08.2017 on the file of the 1st respondent herein and to quash the same as illegal.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.S.Chandrasekar,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed challenging the proceedings initiated by the first respondent under Section 113 of Cr.P.C.

2. The learned counsel for the petitioner submitted that before invoking Section 113 of Cr.P.C., the first respondent ought to have followed the procedure under Section 110 of Cr.P.C. by issuing a show cause notice and thereafter, an enquiry has to be conducted. The learned counsel submitted that the show cause notice as contemplated under Section 110 of Cr.P.C. should be issued only after the concerned Authority records satisfaction and the



likelihood of breach of peace. These mandatory requirements have not been followed in this case and therefore, the same requires interference of this Court.

3. The first respondent has filed a counter in this case and it is stated that there are already three cases pending against the petitioner and the petitioner has continued to involve in committing offense and therefore, notice was given to the petitioner to execute a personal bond for good behaviour.

4. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing on behalf of the respondent.

5. The first respondent had invoked Section 113 of Cr.P.C. since the petitioner did not appear after the summons was issued to him.

6. The first respondent who wants to initiate proceedings, will have to issue a show cause notice under Section 110 of Cr.P.C. to the accused person calling upon him to explain as to why he cannot be ordered to execute a bond for good behavior. Any such Executive Magistrate acting under Section 110 of Cr.P.C shall make an order in writing setting forth the substance of the information received. In other words, before issuing summons under Section 110 of Cr.P.C, there should be some material to show that the Executive Magistrate has applied its mind and he has not mechanically issued summons based on the police report. If on issuance of summons, the accused person fails to appear before the Executive Magistrate then, a summons or warrant can be issued under Section 113 of Cr.P.C.

7. In the present case, the first respondent has taken a stand that the petitioners did not appear before the Executive Magistrate on the date of hearing since he was having the Court hearing before the learned Additional District and Sessions Judge, Ramanathapuram in S.C.No.131 of 2017. Therefore, the petitioner had a valid reason for not appearing on the date on which the hearing was fixed.

8. In the result, the impugned summons issued by the first respondent in M.C.No.52 of 2017, dated 19.08.2017 is hereby quashed and the first respondent is at liberty to initiate fresh proceedings in accordance with the procedure that has been provided under the Code of Criminal Procedure Code. Accordingly, the Criminal Original Petition is allowed. Consequently, connected CrI.M.P.(MD) No.7766 of 2017 is closed.

Sd/-

Assistant Registrar ()

// True Copy //



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Rameshwaram, Ramanathapuram District.

2) The Inspector of Police,
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Thangachimadam, Rameshwaram Taluk,
Ramanathapuram District.

3) Lakshmanan
Special Branch Sub Inspector,
Rameshwaram Police Station, Ramanathapuram District.

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

+1 CC to Mr.M.THIRUNAVUKKARASU, Advocate (SR-100817[F] dated
25/11/2019)

Order made in
Crl.O.P. (MD) .No.11306 of 2017
22.11.2019

VB (06.01.2020) 3P 6C