



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2019

CORAM

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.OP.(MD)No.9821 of 2017

and

CRL.MP(MD)No.6695 of 2017

Benjamin

... Petitioner

Vs.

1.The Superintendent of Police,
Sivagangai District,
Sivagangai.

2.The Sub-Inspector of Police,
Kalaiyarkoil Police Station,
Sivagangai District.

3.Prakasam

... Respondents

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned summon dated 19.07.2017 issued by the 2nd respondent and set aside the same.

For Petitioner: Mr.D.Shanmugaraja Sethupathi

For R1 & R2 : Mr.M.Chandrasekar

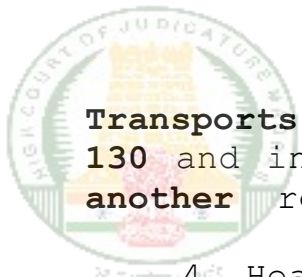
Additional Public Prosecutor

ORDER

This petition has been filed challenging the summon issued by the respondent police under Section 160 of Cr.P.C.

2. The learned counsel for the petitioner submitted that the summons has been issued by the respondent police under Section 160 of Cr.P.C to the petitioner even without registering an FIR under Section 154 of Cr.P.C.

3. The learned counsel for the petitioner in order to substantiate his submissions relied upon the judgments in **Prakash**



Transports Vs. The Inspector of Police reported in 2004 (1) CTC 130 and in **V.N.Pachaimuthu Vs. The Superintendent of Police and another** reported in 2012 (3) CTC 291.

4. Heard the learned Additional Public Prosecutor appearing on behalf of the respondent police.

5. The facts of this case is squarely covered by the judgment cited by the learned counsel for the petitioner. It will be relevant to extract the portions of the judgment in **Prakash Transports**, referred supra:-

"2.The learned counsel appearing for the petitioners submits that as no crime was registered by the respondent-police, he has no jurisdiction to issue summons under Section 160, Cr.P.C compelling the petitioners to appear before him and therefore, the summons has to be quashed. I find some substance in the said contention. The summons, which I have extracted above, shows that the officer did not even mention the crime number in the said summons. The learned Public Prosecutor also submits that no crime was registered by the respondent. If that be the case, it is not understandable as to how he should issue summons, since under Section 160, Cr.P.C., summons could be issued by any police officer making an investigation under that Chapter, which means that investigation is a sine qua non for issuing summons and the investigation can be conducted only in connection with the crime registered in terms of Section 154, Cr.P.C. Since there is no crime registered in terms of Section 154 Cr.P.C., summoning a person to appear before the officer. As the summons summoning the petitioners, issued by the officer, is without jurisdiction, it is quashed. The petition is allowed."

6. It is clear from the above that no summon can be issued under Section 160 Cr.P.C without an FIR being registered under Section 160 Cr.P.C. Therefore, the very summon has been issued without any power or jurisdiction.

7. In the result, the summon issued by the second respondent police is hereby quashed. It is left open to the second respondent police to proceed further with the case and deal with the complaint in accordance with the guidelines given by the Hon'ble Supreme Court in **Lalitha Kumari Vs. Government of Uttar Pradesh** reported in 2013 (6) CTC 353. Accordingly, this Criminal Original



Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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// True Copy //

Sub Assistant Registrar (CS)

dss

To

- 1.The Superintendent of Police,
Sivagangai District,
Sivagangai.
- 2.The Sub-Inspector of Police,
Kalaiyarkoil Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-85710[F]
dated 06/09/2019)

CRL.OP. (MD) No. 9821 of 2017

and

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