

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.23167 of 2014 and
M.P.No.1 of 2014

1. R.Kaviraj
2. D.Ramachandran
3. R.Kamaraj

... Petitioners

Vs.

1. The Executive Magistrate cum
Revenue Divisional Officer,
Mannargudi, Thiruvavur District.

2. Tamaraiselvan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the proceedings in Crl.M.P.No.19/2014/A3 dated 07.07.2014 on the file of the first respondent and to quash the same as arbitrary and unlawful.

For Petitioners : Mr.P.Sesubalan Raja

For Respondents : Mr.R.Ravichandran
Govt. Advocate (Crl.Side) for R1
Notice served-No Appearance - R2

ORDER

This criminal original petition has been filed seeking to quash the notice issued by the first respondent on 07.07.2014 in Crl.M.P.No.19/2014/A3.

2 Learned counsel appearing for the petitioners would submit that FIR was registered on 14.02.2014 and for the very same cause, another FIR was also registered on 17.05.2014 and

show cause notice was issued. As per procedure under Section 107 of Cr.P.C., before issuing notice, opinion under Section 111 of Cr.P.C. has to be formed and the same should be annexed with the show cause notice and in the present case, the same is absent. To support his contentions, the learned counsel placed reliance on the decisions reported in CDJ 2019 BHC 1292 (Farhan Nasir Khan & others vs. State of Maharashtra & others), CDJ 1984 Assam HC 091 (Nripendra Chandra Saha Vs. Binoy Krishna Guha & others) and CDJ 1999 DHC 1137 (Aarti Singh & another vs. State of Delhi & Others). Further no action can be taken under Section 107 for the private dispute between two individuals and the impugned notice was issued on 07.07.2014 to execute a bond only for one year and now the same is, in fact, become infructuous and in the interregnum period there is no allegations against these petitioners.

3 Learned Government Advocate (Crl.Side) appearing for the first respondent would submit that it is only a show cause notice and the petitioner could have very well appeared before the Magistrate and offered his submissions, but, instead of doing so, they approached this Court. Further, the Tahsildar made field enquiry and based on the report of the Tahsildar, the show cause notice was issued.

4 Heard the learned counsel appearing on either side and perused the materials available on record.

5 It is contended by the learned counsel for the petitioner that before issuing show cause notice, opinion has not been formed and for the private dispute, Section 107 should not be invoked. But, on reading show cause notice and also the materials produced by the learned Government Advocate, it is clear that before issuing show cause notice, the Revenue Divisional Officer passed an order of enquiry and the Tahsildar made field enquiry submitted report stating that there is threat to public peace and tranquility. Based on report of the Tahsildar, the show cause notice was issued. Therefore, the contention of the learned counsel for the petitioners is not acceptable and the citations referred to by him are not helpful to his case. Further more, it is only a show cause notice and the petitioners can very well appear before the Magistrate and offer their explanations.

6 In the result, this criminal original petition stands dismissed. Consequently connected miscellaneous petition is closed. The petitioners are directed to appear before the

Magistrate and offer their explanations and on such explanations, the Magistrate is directed to consider the same before passing final order regarding the civil dispute. The petitioners are at liberty to make all their submissions before the Magistrate.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Executive Magistrate cum Revenue Divisional Officer,
Mannargudi, Thiruvarur District.
2. The Public Prosecutor, High Court of Madras.

Crl.O.P.No.23167 of 2014 and
M.P.No.1 of 2014

CP(CO)
BRI(21.05.2020)