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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CrI.OP.No.28006 of 2019
and
CrI.MP.No.14947 of 2019

Murugananathan

... Petitioner

Vs.

1. The Sub Divisional Magistrate (North)
Puducherry.

2. The Inspector of Police,
Orleanpet Police Station,
Puducherry.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records of the first respondent impugned order in M.C.No.267 of 2019 dated 11.10.2019 and quash the same.

For Petitioner : Mr.J.Saravana Vel

For Respondents: Mr.J.Balamurugane
Additional Public Prosecutor
(Puducherry)

ORDER

This petition has been filed by the petitioner to quash the impugned order passed by the first respondent in M.C.No.267 of 2019 dated 11.10.2019.

2. The learned counsel for the petitioner has submitted that the second respondent herein has laid an information under Section 107 of Cr.P.C before the first respondent on 01.10.2019 stating that on 15.03.2019, he has received reliable information that the petitioner herein who is a History Sheet Holder in his Police Station is likely to cause breach of peace at Kosapalayam area by his movements with few rowdy elements in that area. He further submitted that based on the said information, the first respondent has passed the impugned order on 11.10.2019. He further submitted that in the impugned order, the first respondent has not stated that he subjectively satisfied by going through the materials placed before him, but, mechanically, he has passed three (3) lines order and directing the petitioner to execute a bond for



Rs.30,000/- under Section 107 of Cr.P.C for a period of six months. He further submitted that the power under Section 107 of Cr.P.C is to be exercised only under emergency situation. He further submitted that the second respondent has stated in the information laid by him as he has received reliable information on 15.03.2019 itself, but, he laid the information before the first respondent only on 20.03.2019. He further submitted that the first respondent has taken the case on file only on 01.10.2019 and issued summons to the petitioner. He further submitted that first respondent has passed the impugned order without considering whether any emergent situation exists for passing order under Section 107 of Cr.P.C. Therefore he prayed to quash the said impugned order.

3. The learned counsel for the petitioner in support of his contentions relied upon the following decisions:

- (i) Rajender Singh Pathania and Others Vs. State (NCT of DELHI) and Others (2011) 13 Supreme Court Cases 329
- (ii) Ahamed Khan and others Vs. The Revenue Divisional Officer-cum-Sub-Divisional Magistrate, Nagercoil, Kanyakumari District and another 2015 SCC online Mad 9694.

4. The second respondent has filed a counter affidavit denying the allegations made in the petition. He has stated in his counter that on 24.09.2019 at 23.30 hours while he was on rounds at Lenin Street, Kosapalayam, Puducherry and surrounding areas, received reliable information that the petitioner herein is likely to cause breach of peace at Kosapalayam area by his movements with few rowdy elements in that area. Hence he laid an information under Section 107 Cr.P.C before the first respondent to direct the petitioner herein to execute a bond for keeping good behavior for a period of one year. He further stated that based on his prayer, the first respondent has passed an order on 11.10.2019 directing the petitioner to execute a bond for a period of six months without surety for an amount of Rs.30,000/- under Section 107 Cr.P.C. He further stated that the petitioner has involved in as many as 15 cases and hence, he prayed to dismiss the petition.

5. The learned Additional Public Prosecutor (Puducherry) has submitted that since the petitioner is having 15 cases and that the second respondent received a reliable information that the petitioner is likely to cause breach of peace, he laid information under Section 107 of Cr.P.C before the first respondent. Based on the same, the first respondent passed the impugned order and therefore he prayed to dismiss the petition.

6. It is seen from the typed set of papers filed by the learned counsel for the petitioner that the second respondent herein has laid an information before the first respondent



under Section 107 of Cr.P.C. In the said information, the second respondent has stated that on 15.03.2019, while he was on rounds, he received reliable information that the petitioner herein is likely to cause breach of peace but in the counter affidavit filed by him, before this Court, he has stated that on 24.09.2019 at about 23.30, while he was on rounds at Lenin Street, Kosapalayam, Puducherry and surrounding areas, received reliable information that the petitioner herein is likely to cause breach of peace. So, the second respondent himself is not sure as to when he received information about the petitioner herein. Further, though in the information which was laid before the first respondent it is stated that on 15.03.2019, the second respondent has received information against the petitioner herein and the information also has been laid on 20.03.2019, the first respondent has taken the case only on 01.10.2019 and issued summons to the petitioner. It shows that there is no emergent situation for passing any order under Section 107 of Cr.P.C.

7. Further, the impugned order passed by the first respondent contains only three lines which reads as follows:

11/10/19

"P & Counsel for CP Present. P has produced complaints regarding the CP. I am satisfied to direct CP to undertake a bond for a period of 6 months without surety for an amount of Rs.30,000/- under Section 107 Cr.P.C".

8. The aforesaid order shows that the first respondent has not applied his mind before passing the impugned Order. He has not stated that he subjectively satisfied with particulars furnished in the information.

9. In Rajender Singh Pathania and Others Vs. State (NCT of DELHI) and Others (cited supra) the Hon'ble Supreme Court in Paragraph No.17 has observed as follows:

"17. The objects of Sections 107/151 CrPC are of preventive justice and not punitive. Section 151 should only be invoked when there is imminent danger to peace or likelihood of breach of peace under Section 107 Cr.P.C. An arrest under Section 151 can be supported when the person to be arrested designs to commit a cognizable offence. If a proceeding under Sections 107/151 appears to be absolutely necessary to deal with the threatened apprehension of breach of peace. It is incumbent upon the authority concerned to take prompt action. The jurisdiction vested in a Magistrate to act under Section 107 is to be exercised in an emergent situation".



10. Following the aforesaid decision of Hon'ble Supreme Court, this Court in Ahamed Khan and others Vs. The Revenue Divisional Officer-cum-Sub-Divisional Magistrate, Nagercoil, Kanyakumari District and another (Cited Supra) in Paragraph Nos. 9 and 10 has observed as follows:

"9. To add further, to take proceedings against a person under Section 107 Cr.P.C, there must be a receipt of information by the Magistrate and such information must be that the person against whom allegation levelled is likely to commit breach of the peace or disturb the public tranquility and thereafter, the Magistrate has to come to the subjective satisfaction to form an opinion in that regard. The jurisdiction vested with a Magistrate to act under Section 107 is to be exercised in an emergent situation.

10. The Hon'ble Supreme Court has categorically held that unless the substance of the information is not stated in the order passed under Section 107 Cr.P.C, the order is bad in law. Thus, it is clear that merely because a crime is registered is not a ground to initiate proceedings under Section 107 Cr.P.C. Though, it is true that Section 107 Cr.P.C is not punitive in nature, it is intended to prevent apprehended breaches of the peace. But that does not mean that past violence activities, especially those of the immediate past cannot be taken into consideration to arrive at the conclusion that there is a likelihood of a breach of the peace in the future. It is no doubt true that the authorities concerned should be vigilant enough to safeguard the interest of the society and people, as the prevention is better than cure, but at the same time, it should be remembered that compliance of law is very much important while passing an order by undergoing required tests".

11. From the aforesaid decisions it is clear that the jurisdiction vested with a Magistrate to act under Section 107 is to be exercised in an emergent situation. In this case as already pointed out that in the information laid by the second respondent before the first respondent, it is stated that the second respondent got information on 15.03.2019 whereas he laid the said information before the first respondent on 20.03.2019. The first respondent has passed the impugned order only on 11.10.2019 i.e., nearly after seven months. Therefore, it cannot be said that there is an emergent situation for invoking the jurisdiction under Section 107 of Cr.P.C.

12. In the result, this Criminal Original Petition is allowed. The impugned order passed by the first respondent



dated 11.10.2019 is hereby quashed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

Vv

To

1. The Sub Divisional Magistrate (North)
Puducherry.
2. The Inspector of Police,
Orleanpet Police Station,
Puducherry.

+1cc to Mr.J.Saravana Vel, Advocate SR.No.11894

+1cc to Public Prosecutor (Pondy) SR.No.12203

Cr1.OP.No.28006 of 2019
and
Cr1.MP.No.14947 of 2019

RGN(CO)
GMY(13/07/2020)