



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.07.2020
CORAM:

THE HONOURABLE **MR. JUSTICE R. PONGIAPPAN**

Crl.O.P.(MD)No.6954 of 2020
and Crl.M.P.(MD)No.3460 of 2020

WEB COPY

A.Rajkumar

... Petitioner

Vs.

1.The Sub-Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai Town & District.

2.The Revenue Divisional Officer,
Pudukkottai & District.

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records of the First Information Report in Crime No.564 of 2020 on the file of the first respondent and quash the same as arbitrary and illegal.

For Petitioner	: Mr.K.Baalasundharam
For Respondents	: Mr.S.Chandrasekar Additional Public Prosecutor

O R D E R

This criminal original petition has been filed to quash the First Information Report registered in crime No.564 of 2020 on the file of the first respondent.

2.The learned counsel appearing for the petitioner would submit that the petitioner was selected as a Police Constable in the year 1997 and in the same year, when the petitioner was made an attempt to compromise a dispute, one lady, aged about 70 years, who was heart patient, unfortunately fell down and died. Due to which, a case has been registered in crime No.352 of 1997 for the offence under Sections 323, 302 IPC. During the course of trial, the petitioner was convicted and sentenced to undergo seven years rigorous imprisonment. However, the petitioner was released on 22.08.2009, prior to the expiry of the period of the sentence. Now the petitioner is led happy wedded life along with his children. He would further submit that the first respondent herein included the petitioner's name in the rowdy list of Ganesh Nagar Police Station in the year 2016. In this regard, the petitioner filed a writ petition in W.P.(MD)No.5979 of 2019 and the same was now reserved for orders by this Court. He would further more submit that in the said circumstances, the first respondent police registered a case against the petitioner under Section 110(a) of Cr.P.C., 1973. In



the averments set-out in FIR reveals the fact that the petitioner was arrested for the said offence.

3.The learned counsel appearing for the petitioner made further more submission as the provision 110 (a) Cr.P.C., is not a penal provision and it is only an information to the Executive Magistrate. Without knowing the said procedure, registration of case and arresting of the petitioner, is clear abuse of process of law and therefore, the First Information Report registered in crime No.564 of 2020 has to be quashed as illegal.

4.The learned Additional Public Prosecutor appearing for the respondents, on instructions, would submit that the petitioner is having previous cases and therefore, the first respondent registered a case under Section 110(a) Cr.P.C., and forwarded the same to the second respondent with a request to initiate necessary action against the petitioner.

5.Upon considering the arguments advanced by the learned counsel appearing on either side, before entering into the merits and demerits of the petition filed by the petitioner, it is necessary to extract the Section 110(a) Cr.P.C., which reads as follows:-

*"When an Executive Magistrate receives information that there is within his local jurisdiction a person who,
(a) is by habit a robber, house-breaker, thief, or forger"*

6.In respect to the said provision, a Division Bench of this Court while disposing a case in **Crl.O.P.No.17684 of 2015 (M.Krishnamurthy and others Vs. The Sub Divisional Magistrate cum Revenue Divisional Officer, Krishnagiri and other)**, dated 21.04.2017 held as follows:

"In our opinion, what is laid before the Executive Magistrate in the FIR format is only an information and not a First Information Report stricto sensu as contemplated u/s 154 Cr.P.C. This practice does not fall foul of any rule of positive law. In Vinay Tyagi Vs. Irshad Ali [(2013) 5 SCC 762], the Supreme Court has stated that the matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of the doctrine of contemporanea expositio."

Therefore, it was held that the First Information Report registered under Sections 107 Cr.P.C., to 112 Cr.P.C., is only an information to the Executive Magistrate.

7.In this case, for the reason best known to the first respondent, he arrested the petitioner without knowing the



principles of law. Hence, the action initiated by the respondent police is clear abuse of process of law. Further, the averments made in the next portion of FIR discloses the fact that when the second respondent police was in regular patrol work, the petitioner created public nuisance by abusing in filthy language. In the said circumstances, it is obvious for the first respondent to register the case under the provisions of the Indian Penal Code.

8. Therefore, in my considered view, sending an information to the Executive Magistrate, after arresting of the petitioner, is nothing but abuse of process of law and therefore, the First Information Report registered under Section 110(a) Cr.P.C., is illegal the same is quashed. Accordingly, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

gns

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Sub-Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai Town & District.
2. The Revenue Divisional Officer,
Pudukkottai & District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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AP (28.07.2020) 3P-4C