



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.07.2020**

CORAM:

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

Crl.O.P.[MD]No.6888 of 2020

and

Crl.M.P.(MD)No.3430 of 2020

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Raja Hussain, S/o.Kadhermeeran

... Petitioner

Vs.

1.The Second Class Executive Magistrate-cum-
Tahsildar,
Ramanathapuram,
Ramanathapuram District.

2.The Inspector of Police (L & O),
Kenikkarai Police Station,
Ramanathapuram District.

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to quash the impugned summon issued by the first respondent, vide his proceedings in எம்.சி.எண்.அ3/026/2020, dated 25.06.2020, directing the petitioner to appear before him for enquiry related to the registration of case under Section 110 of Cr.P.C.

For Petitioner : Mr.R.Babu Jaganath

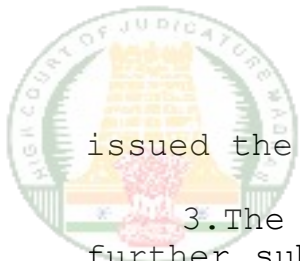
For Respondents : Mr.S.Chandrasekar

Additional Public Prosecutor

ORDER

This petition has been filed seeking to quash the impugned summon issued by the first respondent, vide his proceedings in vk;.rp.vz;.m3/026/2020, dated 25.06.2020, directing the petitioner to appear before him for enquiry on 26.03.2020 at 11.00 a.m., relating to the registration of a case under Section 110 of Cr.P.C.

2.The learned counsel appearing for the petitioner would submit that the first respondent/Second Class Executive Magistrate-cum-Tahsildar, Ramanathapuram, while at the time of issuing summons under Section 110 Cr.P.C., has to satisfy himself the previous antecedents of a person, who required to be present before the said Officer. But, in this case, on thorough scrutiny of the summons issued by the first respondent, nothing was offered about the substance of the information received, previous habit of the petitioner, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required. Therefore, without any ingredients, which are required for issuing summons, the first respondent has



issued the same.

3.The learned counsel appearing for the petitioner would further submit that Section 110 Cr.P.C. is not a Penal Section, but in the impugned summons, it was stated by the first respondent that a case has been registered against the petitioner under Section 110 Cr.P.C., which is against the decisions already rendered by this Court.

4.The learned Additional Public Prosecutor appearing for the respondents would submit that since the impugned summons was issued directing the petitioner to appear for enquiry before the first respondent, the details now stated by the learned counsel for the petitioner cannot be necessary and therefore, the prayer sought for by the petitioner cannot be granted.

5.Upon considering the arguments advanced by the learned counsel on either side, before going into the averments made in this petition, it is necessary to refer Section 110 Cr.P.C., which reads as follows:-

"110.Security for good behaviour from habitual offenders.-

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, or,

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of-

(i) any offence under one or more of the following Acts, namely:-

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(c) the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952) .

(d) the Prevention of Food Adulteration Act, 1954 (37 of

1954).



- (e) the Essential Commodities Act, 1955 (10 of 1955);
- (f) the Untouchability (Offences) Act, 1955 (22 of 1955);
- (g) the Customs Act, 1962 or (52 of 1962);
- (h) the Foreigners Act, 1946 (31 of 1946); or

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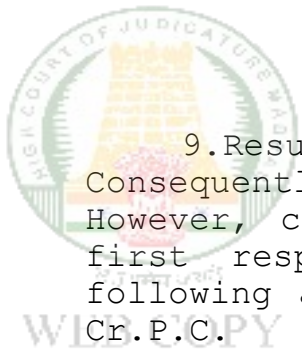
(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit."

6. So, the condition precedent to an order to bind over a person is an inference that he by confirmed habit would commit offences mentioned if not held captive. To bring the proceedings against any person under Section 110 of the Code of Criminal Procedure, the thing necessary is that, the person must be in the habit of committing crimes in respect of offences enumerated in the Section. The whole Section moves, around the habitual offender. Hence, the 'Habit of committing offences' is the main element of Section 110 of the Code. Habit is a tendency or capacity of frequent repetition of the same acts. The word used in the Section is in terms of behavior of frequent repetition or commission of the acts, which are disapproved by the Society and are Coded as offences specifically those which are mentioned in the Section. The habit of a person can be proved by previous convictions or general reputation of that person, when proceedings are initiated against the person under the Section. Hence, the expressions should be understood in proper perspective.

7. Insofar as the present case on hand is concerned, in the impugned summons, the first respondent has not stated anything about the habit of the petitioner. Further, in the said summons, the amount of bond to be executed, the term for which it is to be in force, which are the necessary facts, have also not been stated. Therefore, in any event, the impugned summons issued by the first respondent, is not within the manner required by law.

8. In the light of the above, I am of the view that the impugned summons issued by the first respondent, vide his proceedings in vk;.rp.vz;.m3/026/2020, dated 25.06.2020, directing the petitioner to appear before him for enquiry on 26.03.2020 at 11.00 a.m., relating to the registration of a case under Section 110 of Cr.P.C., has to be quashed. Accordingly, the same is quashed.



9.Resultantly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. However, considering the facts and circumstances of the case, the first respondent is at liberty to issue fresh summons after following all the modalities, which are required under Section 110 Cr.P.C.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)

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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 Second Class Executive Magistrate-cum-Tahsildar,
Ramanathapuram,
Ramanathapuram District.
- 2.The Inspector of Police (L & O),
Kenikkarai Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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