



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.07.2020**

CORAM:

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

Crl.O.P.[MD]Nos.7055 and 7073 of 2020

and

Crl.M.P(MD).Nos.3499, 3500, 3504 and 3505 of 2020

WEB COPY

Crl.O.P.(MD).No.7055 of 2020:-

Muthupandi, S/o.Muthuramalingam

... Petitioner

Vs.

1.The Executive Magistrate/Revenue Divisional Officer,
Paramakudi, Ramanathapuram District.

2.The Inspector of Police,
Keelathuval Police Station,
Ramanathapuram District.

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the impugned proceedings of the first respondent in M.C.No.25 of 2020, dated 11.06.2020, pending on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.S.Bharathi

For Respondents : Mr.S.Chandrasekar

Additional Public Prosecutor

Crl.O.P.(MD).No.7073 of 2020:-

Shanmugam, S/o.Karuppanna Thevar

... Petitioner

Vs.

1.The Executive Magistrate/Revenue Divisional Officer,
Paramakudi, Ramanathapuram District.

2.The Inspector of Police,
Keelathuval Police Station,
Ramanathapuram District.

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the impugned proceedings of the first respondent in M.C.No.22 of 2020, dated 11.06.2020, pending on the file of the first respondent and quash the same as illegal.



For Petitioner : Mr.S.Bharathi
For Respondents : Mr.S.Chandrasekar
Additional Public Prosecutor

COMMON ORDER

WEB COPY

These Criminal Original Petitions were dismissed by this Court, vide common order dated 09.07.2020. However, before the certified order copies could be issued to the parties, today, at the instance of the learned counsel for the petitioners, these Criminal Original Petitions are listed under the caption ''To recall the order''.

2.Previously, when at the time of arguing the matter, neither the learned counsel appearing for the petitioners nor the learned Additional Public Prosecutor appearing for the respondents, brought to the notice of this Court about the decision rendered by this Court in **Crl.O.P.No.17684 of 2015, decided on 24.01.2017, [M.Krishnamurthy and others Vs. The Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Krishnagiri and another]**. Based on the oral submissions made by the learned counsel appearing for the parties, this Court vide common order dated 09.07.2020, dismissed both the Criminal Original Petitions. The common order passed by this Court, dated 09.07.2020, reads as follows:-

''These Criminal Original Petitions have been filed seeking a relief to call for the records relating to the impugned proceedings of the first respondent in M.C.Nos.25 and 22 of 2020 dated 11.06.2020 pending on the file of the first respondent and quash the same as illegal.

2.The learned counsel appearing for the petitioners would submit the petitioners were served with show cause notice under Sections 107 and 111 of Cr.P.C by the first respondent. He would further submit that the first respondent has not recorded his subjective satisfaction and he has not disclosed the substance of the information and other things received from the second respondent. Therefore, the impugned notice sent by the first respondent is liable to be quashed.

3.The learned Additional Public Prosecutor appearing for the respondents would submit that the notice sent by the first respondent is only a show cause notice and therefore, it is not necessary that the first respondent show the subjective satisfaction. He would further submit that only during the time of enquiry as to the truth of information under Section 116 Cr.P.C., the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under Section 111 has been made, to



enquiry has not been commenced, it is necessary for the respondents to mention the reasons for subjective satisfaction in a show cause notice.

4. Upon considering the arguments advanced by either side, it is true only at the time of enquiry under Section 116 of Cr.P.C., if the Magistrate considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under Section 111 has been made, to execute a bond, with or without sureties for keeping the peace or maintaining good behavior. So sending the show cause notices those aspects which are relevant to pass order under Section 111 of Cr.P.C., is not a material one. Therefore, the submission made by the learned Additional Public Prosecutor is found correct and thereby, the show cause notices issued by the first respondent cannot be quashed at this stage.

5. With the above observations, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.''

3. Today the learned counsel appearing for the petitioners relied the abovesaid order and made his submissions as, this Court is having the power of judicial review under Section 482 of Cr.P.C. or Article 226 of the Constitution of India in respect of a show cause notice issued under Section 107 r/w. Section 111 Cr.P.C. He would further submit that in the abovesaid order, a Division Bench of this Court has clearly analyzed the provisions of Sections 107 to 116 of Cr.P.C. and came to the conclusion that in the show cause notice issued by the Executive Magistrate, some particulars in respect of execution of bond viz., 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, have to be mentioned. But, in this case, in the impugned summons, nothing was mentioned, which is against the principles set out in the above referred case. Therefore, the common order dated 09.07.2020, passed in Crl.O.P.(MD)Nos. 7055 and 7073 of 2020, may be recalled and the Criminal Original Petitions may be allowed.

4. In this regard, the learned Additional Public Prosecutor appearing for the respondents made his submissions as, for issuance of show cause notice, those aspects now referred by the learned counsel for the petitioners, are not necessary. Only after completing the enquiry under Section 116 Cr.P.C., the Executive Magistrate would come to the conclusion about the substance of information received and then only, he can order for fixing the amount of the bond to be executed and the term for which it is to be in force.



5.The entire submissions made by the learned counsel appearing for the petitioners is based on the decision rendered by a Division Bench of this Court in **Crl.O.P.No.17684 of 2015** [cited supra], wherein at Paragraph 19, it has been held as follows:-

WEB COPY

19. In our view, a show cause order under Section 107 r/w 111 can be subjected to judicial review under Section 482 Cr.P.C. or Article 226 of the Constitution of India, if on the face of it, the order does not satisfy the minimum requirements of Section 111 or that the same has been passed by a person who is not an Executive Magistrate and not otherwise. In other words, if the order does not contain the substance of the information received, 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, only then, can the High Court interfere and not otherwise.
....''

6.Under such circumstances, now, on going through the show cause notices dated 11.06.2020, issued by the first respondent, it is seen that nothing was mentioned about 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, non-mentioning of the above particulars in the show cause notices dated 11.06.2020, by the first respondent, is against the decision rendered by this Court in Crl.O.P.No.17684 of 2015 [cited supra]. Hence, the common order passed by this Court, dated 09.07.2020 in Crl.O.P.(MD)Nos.7055 and 7073 of 2020, is hereby recalled before issuing certified copies to the parties. The impugned orders passed by the first respondent, vide his proceedings in M.C.Nos.25 and 22 of 2020, dated 11.06.2020, are set aside. Accordingly, both the Criminal Original Petitions are allowed. However, liberty is granted to the first respondent to initiate proceedings afresh in accordance with law. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

smn2/cp

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized

<https://hcservices.ecourts.gov.in/hcservices/>



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.

WEB COPY

- 1.The Executive Magistrate/Revenue Divisional Officer,
Paramakudi,
Ramanathapuram District.
- 2.The Inspector of Police,
Keelathuval Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Common order in
Crl.O.P.[MD]Nos.7055 and 7073 of 2020
16.07.2020

VB (24.07.2020) 5P 4C