



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.[MD]No.6950 of 2020

and

Crl.M.P. (MD) .Nos.3456 and 3457 of 2020

Ayyappan, S/o.Muthuramalingam

... Petitioner

Vs.

1.The Sub-Divisional 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 MC.No.23 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

O R D E R

This Criminal Original Petition was dismissed by this Court, vide 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 petitioner, this Criminal Original Petition is 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 petitioner 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]**.

3.Previously, based on the oral submissions made by the learned counsel appearing for the parties, this Court vide common order dated 09.07.2020, dismissed the Criminal Original Petition. The order passed by this Court, dated 09.07.2020, reads as follows:-

''This Criminal Original Petition has been filed seeking a relief to call for the records relating to the impugned



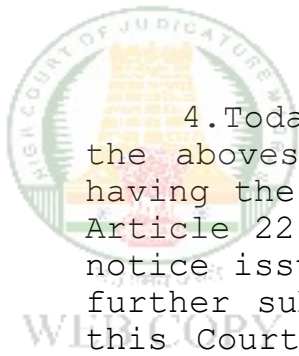
proceedings of the first respondent in M.C.No.23 of 2020 dated 11.06.2020 pending on the file of the first respondent and quash the same as illegal.

2.The learned counsel appearing for the petitioner would submit the petitioner was 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 has recorded his subjective satisfaction. He would further submit that only during the time of enquiry under Section 116 of Cr.P.C., as to the truth of information can enquire the same and then only 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 execute a bond, with or without sureties. Since the stage of enquiry has not been commenced, it is not 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 far 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 notice issued by the first respondent cannot be quashed at this stage.

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



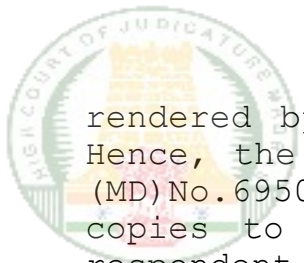
4.Today the learned counsel appearing for the petitioner relied the abovesaid judgment and made his submissions as, this Court is having the power of judicial review under Section 482 of Cr.P.C. or Article 226 of the Constitution of India in respect of a show cause notice issued under Section 107 r/w. Section 111 Cr.P.C. He would further submit that in the abovesaid judgment, 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 order dated 09.07.2020, passed in Crl.O.P.(MD)No. 6950 of 2020, may be recalled and the Criminal Original Petition may be allowed.

5.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 petitioner, 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 executing the bond and the term for which it is to be in force.

6.The entire submissions made by the learned counsel appearing for the petitioner 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:-

'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.
....'

7.Under such circumstances, now, on going through the show cause notice 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 notice 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 order passed by this Court, dated 09.07.2020 in Crl.O.P. (MD)No.6950 of 2020, is hereby recalled before issuing certified copies to the parties. The impugned order passed by the first respondent, vide his proceedings in M.C.No.23 of 2020, dated 11.06.2020, is set aside. Accordingly, the Criminal Original Petition is 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)

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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 Sub-Divisional 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.

Crl.O.P.[MD]No.6950 of 2020

17.07.2020

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