



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP(MD)No.7284 of 2020

and

CRL MP(MD)No.3553 & 3556 of 2020

B.Sureshkumar

...Petitioner / Accused No.1

Vs.

1.The Revenue Divisional Officer /
Sub Divisional Magistrate,
Sivagangai District.

2.The Sub-Inspector of Police,
Sipcot Police Station,
Sivagangai District.
Cr.No.195 of 2020.

...Respondents / Complainants

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, to quash the summons in Na.Ka.No.(m2)/3270/2020, dated NIL, on the file of the 2nd respondent and quash the same as illegal.

For Petitioners : Mr.R.Rajesh

For Respondents : Mr.S.Chandrasekar

Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed, to quash the summons issued by the Sub-Inspector of Police, SIPCOT Police Station, Sivagangai District, in Na.Ka.No.(m2)/3270/2020, on the file of the 2nd respondent, under Section 107 of Cr.P.C.

2. The learned counsel appearing for the petitioner would submit that the 2nd respondent has no power to issue and conduct any enquiry for the proceedings initiated under Section 107 Cr.P.C.

3. On the other hand, the learned Additional Public Prosecutor appearing for the respondents would submit that only on behalf of the 1st respondent, the 2nd respondent had issued summons to the petitioner for appearance of the petitioner before the 1st respondent on 10.07.2020.

4. Now, on considering the rival submissions made by either side along with the copy of the summons issued by the 2nd respondent, it appears that the said summons was issued by the 2nd respondent. In this occasion, it is necessary to see Section 107 Cr.P.C., which reads as follows:-



"Section 107. Security for keeping the peace in other cases:-

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner here in after provided, require such person to show cause, why he should not be ordered to execute a bond, (with or without sureties) for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit;

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction."

5. Accordingly, as per the said provisions, if any information is received in respect of breach of peace or disturb the public tranquillity only the Executive Magistrate can issue summons under Section 107 Cr.P.C. But in this case, instead of following the due procedures contemplated, the 2nd respondent himself issued a summons on behalf of the first respondent. Therefore, it is nothing but clearly abuse of process of law. Accordingly, the impugned summons is liable to be quashed.

6. In the result, this Criminal Original Petition is allowed and the summons issued by the Sub-Inspector of Police, SIPCOT Police Station, Sivagangai District, in Na.Ka.No.(m2)/3270/2020, on the file of the 2nd respondent, is quashed. However, the first respondent is at liberty to initiate the proceedings under Section 107 Cr.P.C., upon materials received from the 2nd respondent. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



MPK

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 Revenue Divisional Officer /
Sub Divisional Magistrate,
Sivagangai District.
- 2.The Sub-Inspector of Police,
SIPCOT Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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KB(27.07.2020) 3P 4C