



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2020**

CORAM:

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

CrI.O.P.(MD)No.7629 of 2020

and

CrI.M.P.(MD)Nos.3659 and 3660 of 2020

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Pillathiyam, S/o.Singam

... Petitioner

Vs.

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

2.The State
Rep. by the Sub-Inspector of Police,
Sipcot Police Station,
Sivagangai District.

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the impugned summon issued by the second respondent in C.No.02/D2PS/2020, dated Nil and quash the same.

For Petitioner : Mr.K.Anbarasan

For Respondents : Mr.S.Chandrasekar

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to quash the impugned summon issued by the second respondent, vide C.No.02/D2PS/2020, dated Nil.

2.The learned counsel appearing for the petitioner would submit that initially, the first respondent herein initiated an enquiry under Section 107 of Cr.P.C. After initiating the enquiry, it is the duty of the first respondent to issue summons to the parties concerned. But, here, in this case, on behalf of the first respondent, the second respondent herein issued summon to the petitioner, which is against the provisions of law. He would further submit that after initiating the enquiry, the second respondent is not having any jurisdiction to send summon to the petitioner and thus, the impugned summon issued by the second respondent police has to be quashed.



3.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 fairly conceded that the impugned summon issued by the second respondent is against the settled position of law.

4.Now, on going through the entire circumstances, it is not in dispute that the second respondent police had registered two cases against the petitioner viz., Crime No.195 of 2020 for the offences punishable under Sections 147, 148, 294(b), 324, 427 and 506(ii) of I.P.C. and Crime No.197 of 2020 for the offence punishable under Section 397 of I.P.C. After registering the said cases, the second respondent gave an information to the first respondent that the petitioner herein is likely to commit breach of peace or disturb the public tranquillity or to do any wrongful act, which would probably create breach of peace among the public. On receipt of the information received from the second respondent, the first respondent herein initiated the above-referred enquiry, for which, the second respondent issued summon to the petitioner for his appearance before the first respondent.

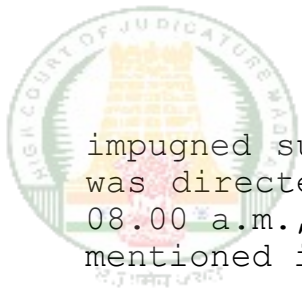
5.At this juncture, it necessary to see Section 107 of Cr.P.C., which reads as follows:-

''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 hereinafter 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.''

6.Now, on considering the requirements for initiating action under Section 107 of Cr.P.C., only an Executive Magistrate, is having the power to issue show cause notice and the person, who gave information is not at all having the power to act on behalf of the Executive Magistrate. In this case, the said rule has been violated by the respondents. Moreover, on going through the copy of the



impugned summon, in which, it has been mentioned as, the petitioner was directed to appear before the first respondent on 10.07.2020 at 08.00 a.m., for enquiry. Except the said date and time, nothing was mentioned in the impugned summon.

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7.In this connection, it is necessary to see the judgment of this Court in the case of **M.Krishnamurthy Vs Sub Divisional Magistrate-Cum- Revenue Divisional Officer** reported in **2017 (1) Mad WN (Cri) 199**, wherein, it has been held as follows:-

'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. Factual adjudication of the satisfaction expressed by Magistrate is ruled out in view of the decision of the Supreme Court in *Vicco Laboratories (supra)*.'

8.Therefore, applying the principles set out in the above referred judgment, this Court is of the view that the impugned summon issued by the second respondent does not disclose 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 and character and class of sureties (if any) required. In such circumstances, this Court can interfere with the impugned order. Therefore, the impugned summon issued by the second respondent is liable to be quashed and accordingly, the same is quashed.

9.Resultantly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

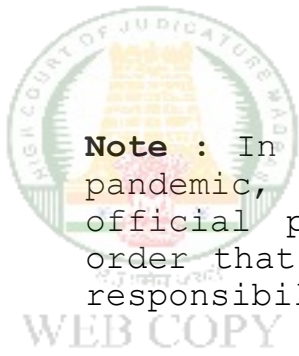
Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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,
Sivagangai.
- 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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AP (31.07.2020) 4P-4C