



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.08.2020**

CORAM:

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

Crl.O.P. (MD)No.8336 of 2020

and

Crl.M.P (MD) No.3947 of 2020

1.S.Ramesh Kumar

2.S.Raja @ Alagarsamy

3.T.Elangovan

4.N.Prabakaran

5.C.Paulraj

6.A.Arivumani

7.I.Babu

8.A.Sahul Hameed

9.P.Pon.Murugesan

...Petitioners No.1 to 9/A-Parties

Vs.

1.The Administrative Executive Magistrate and
Deputy Commissioner of Police (Crime and Traffic),
I/c.Deputy Commissioner of Police, Law and Order,
Trichy City. ... Respondent/Respondent

2.N.Rajkumar

3.K.Kumara Vadivel

4.Sankar

5.Sakthivel

... Respondents 2 to 5/B-Parties

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the entire records pertaining to the order passed by the respondent in Na.Ka.No.209/நி.செ.ந.கா.து.ஆ/தி.மா.2020 dated 20.07.2020 and to set aside the same.

For Petitioners : Mr.C.M.Arumugam
For R-1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate

O R D E R

This Criminal Original Petition has been filed to quash the order in Na.Ka.No.209/நி.செ.ந.கா.து.ஆ/தி.மா.2020 dated 20.07.2020 on the file of the first respondent as illegal.

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



2.The learned counsel for the petitioners would submit that though the order is in the form of show cause notice, it is bereft of details and not issued in accordance with law. The order does not disclose the substance of the information received, the amount of bond to be executed and the term for which it is to be in force. He would further submit that 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.

3.The learned counsel would further submit by this impugned order the first respondent is attempting to dislocate the petitioners. Though factual adjudication of the satisfaction expressed by the Magistrate cannot be done, the impugned order does not contain the relevant materials and thereby it has to be quashed.

4.Per contra, the learned Additional Public Prosecutor appearing for the first respondent would submit that for issuance of show cause notice, the aspects 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. He would further submit that the petitioners appeared along with their respective counsel and they filed their vakalat and they have to appear before the first respondent on 23.07.2020. Whereas, they have not appeared before the first respondent.

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 **CrI.O.P.No.17684 of 2015** in a case of **M.Krishnamurthy Vs Sub Divisional Magistrate-Cum- Revenue Divisional Officer** reported in **2017 1 MadWN (Cri) 199** wherein, it is 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)*."

6. Under such circumstances, now, on going through the show cause notices dated 20.07.2020, 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 20.07.2020, by the first respondent, is against the decision rendered by this Court in **CrI.O.P.No.17684 of 2015** [cited supra].

7. Hence, the impugned order in Na.Ka.No.209/நி.செ.ந.கா.து.ஆ./தி.மா.2020, dated 20.07.2020 passed by the first respondent is hereby set aside and this Criminal Original Petition is allowed. However, liberty is given to the first respondent to initiate proceedings afresh in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// 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 Administrative Executive Magistrate and
Deputy Commissioner of Police (Crime and Traffic),
I/c. Deputy Commissioner of Police, Law and Order,
Trichy City.

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



2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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VB (02.09.2020) 4P 3C