



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.09.2020**

CORAM:

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

Crl.O.P.[MD]No.9691 of 2020

and

Crl.M.P(MD) No.4517 of 2020

A.Muneeswaran

... Petitioner

Vs.

1.The Executive Magistrate (1st class),
cum The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram Distirct.

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

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for entire records relating to the notice served on 05.09.2020 under Section 113 of Cr.P.C vide proceedings No.A4/4768/2020 dated 02.09.2020 issued by the first respondent and quash the same as illegal.

For Petitioner : Mr.K.Saravanan

For Respondents : Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking the relief to call for entire records relating to the notice served on 05.09.2020 under Section 113 of Cr.P.C vide proceedings No.A4/4768/2020 dated 02.09.2020 issued by the first respondent and quash the same as illegal.

2.The learned counsel for the petitioner 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 petitioner. 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 respondents would submit that for issuance of show cause notice, the aspects 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 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 petitioner appeared along with their respective counsel and they filed their vakalat and they have to appear before the first respondent on 08.09.2020. Whereas, they have not appeared before the first respondent.

5.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 **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 02.09.2020, 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 02.09.2020, 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 No.A4/4768/2020 dated 02.09.2020 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(CS-II)

// 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 Executive Magistrate (1st class),
cum The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram Distirct.



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

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

CrI.O.P.[MD]No.9691 of 2020
14.09.2020

AVS (CO)
TR(28.09.2020) 4P 4C