



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2020

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.13069 of 2016

1. H.A.Rahamathullah
2. R.Seiyathu Raviya
3. R.Abul Kalam

... Petitioners

Vs.

State, represented by,
The Sub Inspector of Police,
Anti Land Grabbing Special Cell,
Madurai City.

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records relating to the impugned summon issued by the respondent dated 17.07.2016 and 25.07.2016 under Section 41 and 91 of Cr.P.C. and quash the same as illegal, arbitrary and violative of Article 20(3), Article 21, Section 161(2) of Cr.P.C.

For Petitioner : Mr.S.Ravi
For Respondent : Mr.A.Robinson,
Government Advocate(Crl. Side).

O R D E R

The petitioners challenge the impugned summon issued by the respondent.

2. It is seen that the petitioners are figuring as accused in Crime No.85 of 2015 registered on the file of the respondent. The impugned summon has been issued under Section 91 of Cr.P.C. The Hon'ble Constitution Bench in the decision reported in AIR 1965 SC 1251 (V 52 C (200) (State of Gujarat V. Shyamlal) while considering the corresponding provision in the old Cr.P.C. held as follows:-

"33. Keeping the above considerations in mind, let us look at the terms of the section. It will be noticed that the language is general, and prima facie



apt to include an accused person. But there are indications that the Legislature did not intend to include an accused person. The words 'attend and produce' are rather inept to cover the case of an accused person. It would be odd procedure for a Court to issue a summons to an accused person present in Court 'to attend and produce' a document. It would be still more odd for a police officer to issue a written order to an accused person in his custody to attend and produce a document."

3. In this view of the matter, the impugned summon will have to be necessarily quashed. The criminal original petition stands allowed.

4. It is made clear that what has been quashed is only the impugned summon issued under Section 91 of Cr.P.C. and the power of the investigation officer as provided as per the provisions of Cr.P.C. is not foreclosed.

5. The impugned summon in this criminal original petition stands quashed. The criminal original petition stands allowed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To:

- 1.The Sub Inspector of Police,
Anti Land Grabbing Special Cell,
Madurai City.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Cr1.O.P. (MD)No.13069 of 2016
17.02.2020

pmu
SDS (16.07.2020) 2P-3C