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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.09.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Cr1.OP.No.27072/2015

[Video Conferencing]

M.Ponnusamy

...Petitioner

Versus

1.The Sub-Divisional Executive Magistrate
Cum Revenue Divisional Officer,
Tiruchengode.

2.The Inspector of Police,
Nallur Police Station,
Namakkal District.

3.P.P.Dhanrasu

4.N.Chandrasekharan

5.P.Murugan

6.M.Selvaraj

7.P.Nallayan

8.S.Saravanan

9.S.Velusamy

10.T.Paramasivam

11.ErrataiEllai P.Ponnusamy

...Respondents

Prayer : - Criminal Original Petition filed under Section 482 of Cr.P.C to quash the proceedings pending on the file of the 1st respondent/Learned Sub-Divisional Executive Magistrate Cum Revenue Divisional Officer, Tiruchengodu made in M.C.No.5/15/C Dated 25.08.2015.

For Petitioner : Mr.N.Umapathi

For RR1&2 : Mr.R.Raj Thilak
Government Advocate
[Criminal Side]



ORDER

- (1) Heard the learned counsel for the petitioner and the learned Government Advocate [Crl.Side] for respondents 1 and 2.
- (2) The present petition has been filed taking advantage of Section 482 of Cr.P.C., seeking interference with the order dated 25.08.2015, passed by the 1st respondent/Sub Divisional Magistrate-cum-Revenue Divisional Officer, Tiruchengode in MC.No.5/2015/C, by which order, the said Executive Magistrate had directed the petitioner who was termed as the 'B' Party, to execute bond as necessitated under Section 116[3] of Cr.P.C.
- (3) The learned counsel for the petitioner drew the attention of this Court to the proceedings initiated and the order dated 25.08.2015. A reading of the order shows that owing to various reasons, the said Executive Magistrate had issued summons for appearance to, not only to the petitioner, who was categorised as 'B' Party, but also to the respondents herein, who were categorised as 'A' Party. They were asked to appear on 25.08.2015, the very date of the order, at 2.30 p.m., and 2.00 p.m., respectively. A further perusal of the order shows that at that point of time, both the groups sought time to give necessary explanation. But, however, the Executive Magistrate proceeded further and stated that in accordance with the information received by him, it was necessary that he should exercise his powers to call upon both the parties to execute bond under Section 116[3] of Cr.P.C.
- (4) The learned counsel for the petitioner assails the said order on the ground that opportunity was not granted to give necessary explanation and the Executive Magistrate should have afforded some time and should have examined any representation given by either one of both parties and thereafter, had come to subjective satisfaction and should have applied his mind to the facts and thereafter, called the parties to execute the bond as required under Section 116[3] of Cr.P.C. A perusal of Section 107 of Cr.P.C., shows that even a cursory reading of the said provision, makes it mandatory that before calling upon any person to execute a bond or give necessary security, a show cause has to be issued as to why he should not be ordered to execute such a bond. On a reverse reading of the very same sentence, it would only imply, on issuance of such show cause, necessary explanation should be invited to be given as to why bond should not be called upon to be executed. This would further imply that explanation if given, has to



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be examined before calling upon the particular person to execute bond. This further implies that opportunity to give explanation is inbuilt in the very provision itself. If such opportunity is not granted, then, any order passed by the Executive Magistrate necessarily suffers from want of following procedural requirement and still necessarily has to be interfered with by this Court.

- (5) My attention has also been drawn to an order passed by a learned Single Judge of this Court in CrI.RC [MD] No.300/2015 dated 31.07.2015 [Fr.Michael Raj and Others Vs. The Executive Magistrate - II and Tahsildar, Thiruvadanai, Ramanathapuram District and Another], wherein the learned Single Judge had expressed an opinion that prior to passing any order, calling upon the parties to execute a bond, a preliminary order must be passed under Section 107 of Cr.P.C. It is pointed out by the learned counsel for the petitioners that in this case, such a preliminary order had not been passed and therefore, the order impugned herein, necessarily will have to be interfered with.
- (6) Mr.E.Raj Thilak, learned Government Advocate also pointed out that subsequent to the said order, through the information received by the prosecution, both the parties had actually executed the bond under Section 110 of Cr.P.C., which was in force for a period of one year and thereafter, expired by abatement of time.
- (7) Be that as it may, nothing survives in the matter and therefore, the order now questioned, necessarily has to be quashed.
- (8) Accordingly, the Criminal Original Petition stands allowed and the order passed by the 1st respondent dated 25.08.2015 is hereby quashed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Sub-Divisional Executive Magistrate
Cum Revenue Divisional Officer,
Tiruchengodu.



2.The Inspector of Police,
Nallur Police Station,
Namakkal District.

3.The Public Prosecutor
High Court, Madras.

+1cc to Mr.N.Umapathi, Advocate Sr No.43865

+1cc to Mr.R.Prabakar, Advocate Sr No.43785

Cr1.OP.No.27072/2015

NMI (CO)

PR (20/09/2021)