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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.15035 of 2021
& CrI.M.P.No. 8199 of 2021

Sivappa
S/o. Late Krishnappa

... Petitioner

Versus

1. Deputy Superintendent of Police
Land Grabbing Special Wing
Krishnagiri District

2. Jagatheesha

3. Bhavan

4. Mithun

... Respondents

PRAYER: This Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the summon as against the petitioner in C.No.270/H2/SP-Gri/ALGSC/KGI/2021, dated on 19.07.2021 issued by the 1st respondent police.

For Petitioner : Mr. M. Mohamed Riyaz

For 1st Respondent : Mr.A.Damodharan,
Govt. Advocate (CrI.side)

ORDER

(This case has been heard through video conference)

The petitioner had filed this petition seeking to quashing of summons in C.No.270/H2/SP-Gri/ALGSC/KGI/2021, dated 19.07.2021, which has been sent under Section 160 and 91 Cr.P.C. calling the petitioner to appear on the complaint of respondents 2 to 4 along with documents.

2. Without going into the merits of the case, the learned counsel for petitioner would submit that on the face of it, summons issued by the 1st respondent police without any authority



and it has to be quashed. Further, this court in Crl.O.P.No.28273 and 28274 of 2007, reported in 2010 SCC Online Mad 2718, has already held that without registration of F.I.R., no summons can be issued under Section 160 and 91 Cr.P.C., which has been dealt with elaborately and this Court had given a positive direction to the Investigating agency while quashing summons issued under Section 160 and 91 of Cr.P.C. and also placing reliance on the order passed by this court in Crl.O.P.No. 10929 of 2019, dated 04.06.2019, wherein, clearly held as follows :-

"9. In view of the above, the impugned summons issued by the first respondent is without jurisdiction and hence, the same is quashed. It is made clear that it is left open to the first respondent to take further action on the complaint pending before it, strictly in accordance with the guidelines given by the Hon'ble Supreme Court in Lalitha Kumari vs. Government of Uttar Pradesh reported in 2013 (6) CTC 353."

Hence, he prayed for quashing summons.

3. The learned Government Advocate (Crl. Side) appearing for 1st respondent would submit that earlier, the 1st respondent police has been issuing summons under Section 160 and 91 Cr.P.C. and thereafter, now it has been brought to the notice of 1st respondent police and the other investigating agency that on the merit of Lalithakumari case and the direction issued to the Director General of Police and also the directions issued by this court, have to follow the above suggestions. In future, the petitioner should be summoned, if required for enquiry following Lalithakumari case and without prejudice to the petitioner's right of enquiry, the present summons may be quashed giving liberty to the 1st respondent police to issue fresh summons.

4. This Court, considering the submissions and on perusal of materials, the Apex Court as well as this Court has already held that in a case of enquiry, summons can be issued only following Lalithakumari case and not under Section 160 and 91 Cr.P.C. In view of the same, summons issued by the respondent police quashed giving liberty to the 1st respondent police to take further action on the complaint of 2nd respondent in accordance with law as stated above. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Crl.M.P. is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



rpp/dsn

To

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1. The Director General of Police,
Chennai.
2. The Deputy Superintendent of Police,
Land Grabbing Special Wing
Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.M.Mohamed Riyaz, Advocate Sr.43610

CRL.O.P.No.15035 of 2021

nrl[col]
srg 06/10/2021