



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.25517 of 2021
and
W.M.P.No.26947 of 2021

R.V.Chidambaram

...Petitioner

Versus

1. The Sub-Divisional Magistrate Cum
Revenue Divisional Officer,
Erode District,
Erode.

2. The Inspector of Police,
Chennimalai Police Station,
Erode District.

3. S.Veerakumar

...Respondents

PRAYER: Writ Petition filed under Article 226 Constitution of India, to issue Writ of Certiorarified Mandamus calling for the records pertaining to the 1st respondent proceedings in Na.Ka.2117/2020/A2 dated 12.10.2021 and to quash the same.

For Petitioner : Mr.M.Guruprasad

For Respondents: Mr.R.Vinothraja for R1 and R2
Gov. Advocate (Cr1.Side)

ORDER

This Writ Petition has been filed to call for the records pertaining to the proceedings of the 1st respondent in Na.Ka.2117/2020/A2 dated 12.10.2021 and to quash the same.

2. The contention of the petitioner is that the petitioner had received a notice under Section 107 of Cr.P.C in Na.Ka.2771/2020/A2 dated 12.10.2021 and the issuance of the impugned notice is arbitrary. The dispute is only between the family members and already there are three civil suits pending before the District Munsif Court, Perundurai.



3. Further, the learned counsel for the petitioner submitted that the 3rd respondent had purchased the property from the paternal uncle of the petitioner. There was some dispute with regard to the usage of pathway and common area, for which, civil suits filed by both the parties are pending. In such circumstances, invoking of Section 107 Cr.P.C. would not apply and the same is not proper.

4. Mr.R.Vinothraja, learned Government Advocate (Crl.Side) appearing for the respondents would submit that on the complaint of the 2nd respondent police, the 1st respondent had issued notice under Section 107 Cr.P.C., It is only a preliminary notice and if the petitioner is aggrieved over the same, he had to appear before the 1st respondent and make objections, but, the petitioner had rushed to this Court. Hence, a direction may be given to the petitioner to approach the 1st respondent and submit their objections.

5. Considering the submissions on either side and on perusal of the documents filed on record, it is seen that fundamentally the aspect of issuance of notice under Section 107 of Cr.P.C., by the 1st respondent appears to be improper. It is a dispute between the two adjacent property owners and there are civil suits pending between them. In such circumstances, the issuance of notice under Section 107 of Cr.P.C. is not proper.

6. In view of the above, the notice issued by the 1st respondent in Na.Ka.2117/2020/A2 dated 12.10.2021 is quashed. Accordingly, the present Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

sp / ssd

To

1. The Sub-Divisional Magistrate Cum
Revenue Divisional Officer,
Erode District,
Erode.



2. The Inspector of Police,
Chennimalai Police Station,
Erode District.

3. The Public Prosecutor,
High Court, Madras - 104.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.63195

W.P.No.25517 of 2021

NRL (CO)

RGA (14/12/2021)