



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2021

CORAM :

THE HONOURABLE Mrs.JUSTICE R. HEMALATHA

Crl.O.P.(MD)No.3108 of 2021

and

Crl.M.P(MD)No.1697 of 2021

1.Maharajan
2.Durai Raj
3.Thirumalai Muthu
4.Subramanian
5.Amsudurai
6.Paldurai
7.Kumaresan

... Petitioners

Vs.

1.The Sub-Divisional Magistrate cum
Revenue Divisional Officer,
Sankarankovil.

2.The Inspector of Police,
Saernthamaram Police Station,
Tenkasi District.

3.Thangadurai
4.Arunachalam
S/o.Thangam
5.Murugan
6.Thangadurai
7.Arunachalam
S/o.Annamalai Nadar
8.Chithirakkani
9.Krishnasamy

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in A3/MC.02/2020 (107) on the file of the Sub Divisional Magistrate cum Revenue Divisional Officer, Sankarankovil and quash the same.

For Petitioners : Mr.N.Sankar Ganesh

For R1 & R2 : Mr.A.Robinson
Government Advocate (Criminal Side)



ORDER

The present petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records in A3/MC.02/2020 (107) on the file of the Sub Divisional Magistrate cum Revenue Divisional Officer, Sankarankovil and quash the same.

2.The primordial submission of the petitioners is that the impugned proceedings, dated 16.11.2020, under Section 107 of the Code of Criminal Procedure, issued by the first respondent against the petitioners is illegal and un-sustainable, as it does not state the facts leading to the issuance of the said proceedings.

3.Mr.N.Sankar Ganesh, learned counsel appearing for the petitioners relied on the decision of the Hon'ble Division Bench of this Court in **M.Krishnamurthy Vs. The Sub Divisional Magistrate Cum Revenue Divisional Officer, Krishnagiri and another**, reported in **2017 (1) CTC 680**, in which, it has been held thus :

"23. 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 the Magistrate is ruled out in view of the decision of the Supreme Court in Vicco Laboratories (supra)."

4.Mr.A.Robinson, learned Government Advocate (Criminal side), who accepts notice on behalf of the respondents 1 and 2, on instructions, fairly conceded that the summons issued to the accused persons by the Executive Magistrate is not in consonance with the provisions laid down under Section 111 of the Code of Criminal Procedure and therefore, the same is liable to be set aside.

5.Considering the submissions made on either side, the impugned order passed by the Executive Magistrate cum Revenue Divisional Officer, Sankarankovil, dated 16.11.2020 is hereby set aside.



6. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RMK

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 Sub-Divisional Magistrate cum
Revenue Divisional Officer,
Sankarankovil.
- 2.The Inspector of Police,
Saernthamaram Police Station,
Tenkasi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.N.SHANKAR GANESH, Advocate (SR-8054[F] dated 02/03/2021)

Order made in
Crl.O.P. (MD)No.3108 of 2021 and
Crl.M.P(MD)No.1697 of 2021
26.02.2021

MJ(CO)

SRS (18/03/2021) 3P : 5C