



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :01.02.2021

CORAM :

THE HONOURABLE **Mrs. JUSTICE R. HEMALATHA**

Crl.O.P. (MD)No.1209 of 2021

and

Crl.M.P(MD).No.588 of 2021

WEB COPY

Syed Ali @ Mullan Syed Ali ... Petitioner/Sole Accused
Vs.

1.The Executive Magistrate cum Assistant
Commissioner (L&O),
Tirunelveli, Tirunelveli District.

2.The Inspector of Police,
Melapalaiyam Police Station,
Tirunelveli District.

... Respondents/Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for records in EMC.No.347 of 2020 passed by the first respondent on 31.12.2020 and quash the same.

For Petitioner : Mr.C.Susikumar
For Respondents : Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

The present petition is filed by the petitioner challenging the proceedings of the first respondent in EMC.No.347 of 2020 .

2.The primordial submission of the learned counsel for the petitioner is that the proceedings initiated by the first respondent is in violation of principles of natural justice, since no notice under Section 107 of the Code of Criminal Procedure was issued to him and that show cause notice under Section 111 of the Code of Criminal Procedure should also be issued by the Executive Magistrate, after satisfying himself that sufficient grounds are available to proceed further under Section 107 of the Code of Criminal Procedure. He drew the attention of this Court to the proceedings dated 31.12.2020 and contended that the present notice is issued directly under Section 113 of the Code of Criminal Procedure without following the procedures contemplated under Sections 107, 110 and 111 of Code of Criminal Procedure.

3.He also relied on the decision of a Single Bench of this Court in Crl.O.P(MD).No.11306 of 2017, wherein it is held that:

".....

6.The first respondent who wants to initiate proceedings, will have to issue a show cause notice



under Section 110 of the Code of Criminal Procedure to the accused person calling upon him to explain as to why he cannot be ordered to execute a bond for good behavior. Any such Executive Magistrate acting under Section 110 of the Code of Criminal Procedure shall make an order in writing setting forth the substance of the information received. In other words, before issuing summons under Section 110 of the Code of Criminal Procedure there should be some material to show that the Executive Magistrate has applied its mind and he has not mechanically issued summons based on the police report. If on issuance of summons, the accused person fails to appear before the Executive Magistrate then, a summons or warrant can be issued under Section 113 of the Code of Criminal Procedure....."

3.In the instant case, even though the proceedings states that a notice under Section 113 of Code of Criminal Procedure is issued, a perusal of the entire proceedings shows that it is the show cause notice under Section 110 of the Code of Criminal Procedure and therefore, the Executive Magistrate cannot be found fault with in issuing the said proceedings.

4.The main contention of the petitioner is that since the proceedings states that summon under Section 113 of Code of Criminal Procedure is issued, the same cannot be sustained under the law. In the circumstances, the impugned summon dated 31.12.2020 issued by the first respondent under Section 113 of Code of Criminal Procedure in EMC.No.347 of 2020 is hereby quashed and the first respondent is at liberty to initiate fresh proceedings in accordance with the procedure that has been provided under the Code of Criminal Procedure.

5.Accordingly, the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

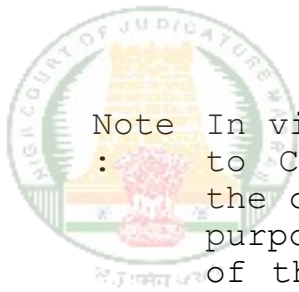
Assistant Registrar (Records)

// 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 Executive Magistrate cum Assistant Commissioner (L&O),
Tirunelveli, Tirunelveli District.
- 2.The Inspector of Police,
Melapalaiyam Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.1209 of 2021

sss (CO)

KK(10.03.2021) 3P 4C