



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **15.02.2021**

CORAM:

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

Crl.O.P.(MD)No.2315, 2319, 2322, 2324 and 2325 of 2021

and

Crl.M.P.(MD)No.1192,1193,1196,1197,1199 to 1202, 1207 & 1208 of 2021

C.Mariappan ...Petitioner in Crl.O.P.(MD)No.2315 of 2021
S.Mariappan ...Petitioner in Crl.O.P.(MD)No.2319 of 2021
R.Murugan ...Petitioner in Crl.O.P.(MD)No.2322 of 2021
T.Mariappan ...Petitioner in Crl.O.P.(MD)No.2324 of 2021
G.Murugan ...Petitioner in Crl.O.P.(MD)No.2325 of 2021

/vs./

1.The Executive Magistrate cum Deputy Commissioner of Police,
Law and Order,
Tirunelveli City,
Tirunelveli.

2.The Inspector of Police,
Pettai Police Station,
Tirunelveli. ...Respondents in all Crl.O.Ps
(LIR No.49 of 2020)

COMMON PRAYER: Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in EMC No.325 of 2020 dated 30.12.2020 and quash the same.

For Petitioner : Mr.P.Samuel Gunasingh (in all Crl.O.Ps)
For Respondents : Mr.A.Robinson (in all Crl.O.Ps)
Government Advocate (Criminal Side)

COMMON ORDER

These petitions are filed under Section 482 of the Code of Criminal Procedure praying to call for the records in EMC No.325 of 2020 dated 30.12.2020 and quash the same.

2.The primordial submission of the petitioners is that the impugned proceedings, dated 30.12.2020, under Section 113 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.P.Samuel Gunasingh, 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, on instructions, fairly conceded that the summons issued to the accused persons by the Executive Magistrate is not in inconsonance 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 Deputy Commissioner of Police, Law and Order, Tirunelveli City, Tirunelveli, dated 30.12.2020 is hereby set aside.

6.Accordingly, this Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

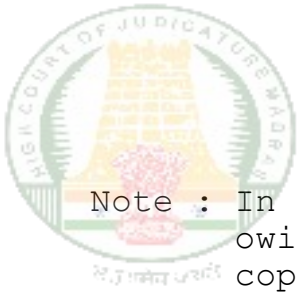
Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



WEB COPY

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To

- 1.The Executive Magistrate cum Deputy Commissioner of Police,
Law and Order,
Tirunelveli City,
Tirunelveli.
- 2.The Inspector of Police,
Pettai Police Station,
Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Common Order made in
Crl.O.P.(MD)No.2315, 2319, 2322, 2324 and 2325 of 2021

Dated:15.02.2021

SV2 (CO)

TR(10.03.2021) 3P 4C