



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2021

CORAM :

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

Crl.O.P. (MD)No.3647 of 2021

and

Crl.M.P. (MD)No.2019 of 2021

WEB COPY

Shankar

...Petitioner

/Vs./

1.The Executive Magistrate cum Deputy Commissioner,
(Law and Order), Tirunelveli City,
Tirunelveli.

2.The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City.

...Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.M.C.No.307 of 2020, dated 24.12.2020 on the file of the first respondent and quash the same.

For Petitioner

: Mr.M.S.Jeyakarthik

For Respondents

: Mr.A.Robinson

Government Advocate

ORDER

This petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records in E.M.C.No.307 of 2020, dated 24.12.2020 and quash the same.

2.The primordial submission of the petitioner is that the impugned proceedings, dated 24.12.2020, under Section 107 of the Code of Criminal Procedure, issued by the first respondent against the petitioner is illegal and un-sustainable, as it does not state the facts leading to the issuance of the said proceedings.

3.Mr.M.S.Jeyakarthik, learned counsel appearing for the petitioner 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 summon issued to the accused person 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, (Law and Order), Tirunelveli City, Tirunelveli, dated 24.12.2021 is hereby set aside.

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

Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Deputy Commissioner,
(Law and Order), Tirunelveli City,
Tirunelveli.

2.The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City.

<https://hcservices.ecourts.gov.in/hcservices>



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-10974[F] dated
15/03/2021)

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ES (CO)
KB(17.04.2021) 3P 5C