



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Crl.O.P. (MD) .No.3771 of 2021

and

Crl.M.P(MD) .No.2108 of 2021

Asarudeen

... Petitioner

Vs.

1.The Sub Divisional Magistrate-cum-
Revenue Divisional Officer,
Melur, Madurai District.

2.The Sub-Inspector of Police,
Mellavazhuvu Police Station,
Mellavazhuvu, Madurai District.

... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in LIR No.08 of 2021 and quash the same as illegal.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.A.Robinson

Government Advocate (Criminal Side)

ORDER

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure praying to call for the records relating to the impugned notice issued by the second respondent in LIR No.08 of 2021 and quash the same.

2.The primordial submission of the petitioner is that the impugned proceedings, dated .Nil, under Section 107 of the Code of Criminal Procedure, issued by the second 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.P.Ganapathi Subramanian, 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 for the respondents, fairly conceded that the summons issued to the accused persons by the Sub Divisional Magistrate is not in inconsonance with the provisions laid down under Section 111 of Criminal Procedure Code and therefore, the same is liable to be set aside.

5.Considering the submissions made on either side, the impugned orders passed by the second respondent in LIR No.08 of 2021, is hereby set aside.

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

Sd/-

Assistant Registrar ()

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

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