



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date :05.03.2021

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THE HONOURABLE MRS .JUSTICE R.HEMALATHA

CRL OP(MD). No.3480 of 2021

and

Crl.M.P(MD).Nos.1917 and 1918 of 2021

Balamurugan

... Petitioner

Vs

1.The Executive Magistrate II cum Tahsildar,
Ramanthapuram District, Ramanathapuram.

2.The Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in M.C.No.(A3) 113/2021 dated 26.02.2021 passed by the first respondent and quash the same.

For Petitioners : Mr.J.Vishnu

For Respondents : 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 M.C.No.(A3) 113/2021 dated 26.02.2021 passed by the first respondent and quash the same.

2.The primordial submission of the petitioner is that the impugned proceedings, dated 26.02.2021, under Section 113 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.J.Vishnu, 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



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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 person by the Executive Magistrate is not in inconsonance with the provision 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 II cum Tahsildar, Ramanthapuram District, Ramanathapuram, dated 26.02.2021 is hereby set aside.

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

Sd/-

Assistant Registrar(T & P)

// 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 II cum Tahsildar,
Ramanthapuram District, Ramanathapuram.

2.The Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.

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

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TR(23.03.2021) 3P 4C