



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2021

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.(MD)No.3885 of 2021

and

Crl.M.P(MD)Nos.2159 and 2162 of 2021

Thowbeek Ali

... Petitioner

Vs.

1.The Second Class Executive Magistrate,
Ramanathapuram Taluk,
Ramanathapuram District.

2.The Sub Inspector of Police,
Mandapam 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.m4/35/21, dated 16.02.2021 on the file of the first respondent and quash the same.

For Petitioner : Mr.T.Veerakumar

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 in M.C.No.m4/35/21, dated 16.02.2021, on the file of the first respondent and quash the same.

2.The primordial submission of the petitioner is that the impugned proceedings, dated 16.02.2021, 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.T.Veerakumar, 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, fairly conceded that the summons issued to the accused person by the Second Class Executive Magistrate is not in inconsonance with the provisions laid down under Section 113 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 orders passed by the Second Class Executive Magistrate, Ramanathapuram Taluk, in M.C.No.m4/35/21, dated 16.02.2021, is hereby set aside.

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

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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.



1.The Second Class Executive Magistrate,
Ramanathapuram Taluk,
Ramanathapuram District.

2.The Sub Inspector of Police,
Mandapam Police Station,
Ramanathapuram District.

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

Crl.O.P. (MD)No.3885 of 2021

SSS(CO)
TR(15.04.2021) 3P 4C