



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2021

CORAM :

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

Crl.O.P.(MD)Nos.4304 of 2021

and

Crl.MP(MD) No. 2412 of 2021

Habib Mohamed Shathakkathulla ... Petitioner/Respondent

Vs.

1.The Second Class Executive Magistrate/Tahsildhar,
Office of Second Class Executive Magistrate/Tahsildhar,
Ramanathapuram Taluk,
Ramanathapuram.

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

... Respondents/Complainants

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for records in M.C.No.M4/24/21, dated 16.02.2021 on the file of the first respondent and quash the same.

For Petitioner : Mr.K.Navaneetharaja
For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

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.M4/24/21, 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.K.Navaneetharaja, 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.S.Chandrasekar, learned Additional Public Prosecutor, 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 consonance 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 Second Class Executive Magistrate/Tahsildar, Ramanthapuram District, dated 16.02.2021 is hereby set aside.

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

Sd/-

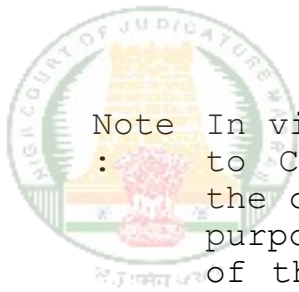
Assistant Registrar(P & A)

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/ /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.

To

- 1.The Second Class Executive Magistrate/Tahsildhar,
Office of Second Class Executive Magistrate/Tahsildhar,
Ramanathapuram Taluk,
Ramanathapuram.
- 2.The Inspector of Police,
Mandapam Police Station,
Ramanathapuram District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) Nos.4304 of 2021
22.03.2021

SMV(CO)
TR(24.04.2021) 3P 4C