



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2021

CORAM :

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CrI.OP.(MD)No.4557 of 2021 &

CrI.MP(MD)No.2556 of 2021

Sathishwaran

... Petitioner

vs.

1.The Second Class Magistrate cum Thasildar,
Paramakudi Taluk,
Ramnad District.

2.The Inspector of Police,
Emaneshwaram Police Station,
Ramnad District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in MC.No.89 of 2020, dated 17.03.2021 on the file of the first respondent and quash the same.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.A.Robinson,
Government Advocate (Criminal Side)

ORDER

The present petition is filed seeking to call for the proceedings of the first respondent in MC.No.89 of 2020, dated 17.03.2021 and quash the same.

2.Mr.C.Jeganathan, learned counsel appearing for the petitioner submits that the first respondent, without following the due procedures contemplated under Sections 107 and 111 of the Code of Criminal Procedure, passed an order on 17.03.2021.

3.The learned counsel 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**, which reads that,

"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*."

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 persons by the Second Class Magistrate cum Thasildar, Paramakudi Taluk, Ramnad District is not inconsonance with the provisions laid down under Section 107 of the Code of Criminal Procedure and therefore, the same is liable to be set aside.

5. Considering the said submissions made on either side, the impugned order passed by the Second Class Magistrate cum Thasildar, Paramakudi Taluk, Ramnad District in MC.No.89 of 2020, dated 17.03.2021, is set aside.

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

Sd/-

Assistant Registrar (CRL)

// 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 Second Class Magistrate cum Thasildar,
Paramakudi Taluk,Ramnad District.
- 2.The Inspector of Police,
Emaneshwaram Police Station,Ramnad District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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PM(CO)

KB(22.04.2021) 2P 4C

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