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Crl.O.P.No.26525 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

**Crl.O.P.No.26525, 27182, 27128, 26553, 26696, 27170, 26694, 26877, 27739
& 27740 of 2022 and
Crl.M.P.Nos.16329, 16717, 16645, 16346, 16423, 16697, 16424, 16525,
17042 & 17043 of 2022**

Crl.O.P.No.26525 of 2022

K.Siva ... Petitioner

Vs.

1.The Sub-Divisional Magistrate -cum-
Revenue Divisional Officer,
Udayarpalayam, Ariyalur District.

2.The Inspector of Police,
Andimadam Police Station,
Ariyalur District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to impugned bond signed by the petitioner before the 1st respondent herein in M.C.No.05(Cr.P.C.) 2022 (U/s.106 & 107 Cr.P.C) dated 10.09.2022 and quash the same.

In all Crl.O.Ps.

For Petitioner : Mr.G.Karthikeyan

For Respondents : Mr.S.Santhosh
Government Advocate (Crl. Side)



Crl.O.P.No.26525 of 2022

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records pertaining to the impugned bonds signed by the petitioners, before the 1st respondent herein, in M.C.No.05(Cr.P.C.) 2022 (U/s.106 & 107 Cr.P.C), dated 10.09.2022, 19.09.2022 & 16.09.2022, respectively and quash the same.

2.It is submitted by the learned counsel for the petitioners that summons dated 16.08.2022 were issued by the 1st respondent in M.C.A3/14 (107 Cr.P.C.)/2021 with a direction to the petitioners to appear before the Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Udayarpalayam on 24.08.2022 at 11.00 a.m. to answer the charges under Section 107 Cr.P.C. Challenging these summons, petitioners filed Crl.O.P.No.21816 of 2022 for quashing the summons. The abovesaid criminal original petition was listed for hearing on 12.09.2022. In view of the filing of Crl.O.P.No.21816 of 2022, petitioners did not appear before the Sub-Divisional Magistrate-cum-Revenue Divisional Officer on 24.08.2022. Thereafter, the learned Sub-Divisional Magistrate-cum-Revenue Divisional Officer directed the arrest of the petitioners and produce before him on 10.09.2022. Subsequently, petitioners were arrested and produced before the Sub-Divisional Magistrate-cum-



Crl.O.P.No.26525 of 2022

Revenue Divisional Officer and made to execute a bond under Sections 106 & 107 Cr.P.C. Challenging the bonds secured from the petitioners, these petitions have been filed.

3.The learned counsel for the petitioners further submitted that the bond under Sections 106 & 107 Cr.P.C. can be secured only by a Court of Sessions or Court of Magistrate of the first class and not by an Executive Magistrate. Before requiring one to execute a bond under Sections 106 & 107 Cr.P.C., an order has to be made under Section 111 Cr.P.C. The Magistrate is required to conduct an inquiry to enquire into the truth of the information, upon which, action has been taken and to take further evidence as that appears necessary. Such inquiry shall have to be conducted in the manner prescribed for conducting trial and recording evidence in summons case. However, it is submitted by the learned counsel for the petitioners that no such inquiry as contemplated under Section 116 Cr.P.C. was conducted. Even if an order is passed demanding execution of bond, that is appealable under Section 373 Cr.P.C. No opportunity was given to the petitioners for preferring an appeal. Therefore this petition.



Crl.O.P.No.26525 of 2022

4.The learned Government Advocate (Crl.Side) submitted that it is not as though no enquiry was conducted. In the enquiry conducted, the petitioners accepted the charges against them and came forward to execute the bond. Therefore, an order was passed directing them to execute the bond. Only thereafter, they executed the bond.

5.Considered the rival submissions. It is seen from the warrant of arrest issued by the 1st respondent, dated 09.09.2022 that the 2nd respondent herein was directed to arrest and produce the petitioners before the 1st respondent on 10.09.2022. In the inquiry, they said to have admitted the charges and therefore, they were directed to execute the bond.

6.Sections 111 & 116 Cr.P.C.read as follows:

111.Order to be made.- *When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the terms for which it is to be in force, and the number, character and class of sureties (if any) required.*



116. Inquiry as to truth of information.-

(1) When an order under section 111 has been read or explained under section 112 to a person in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons cases.

(3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reason to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry and may detain him in custody until such bond is



executed or, in default of execution, until the inquiry is concluded:

Provided that—

(a) no person against whom proceedings are not being taken over under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt within the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its



Crl.O.P.No.26525 of 2022

*commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs :
Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.*

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

Section 111 Cr.P.C. requires the Magistrate acting under Sections 107, 108, 109 or 110 to require any person to show cause, should make an order in writing, setting forth the substance of information recorded, amount of bond to be executed, the term, period, number and character of sureties. Section 116 Cr.P.C. requires that an inquiry has to be conducted to unravel the truth of the information, upon which, action has been taken. For the said purpose, recording of evidence may be necessary. Such inquiry should be conducted like a trial and recording evidence in summons cases.



Crl.O.P.No.26525 of 2022

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7. In the case before hand, the order of the first respondent does not confirm to the requirements under Section 111 Cr.P.C. There is absolutely no recording of evidence and no inquiry was conducted as per the procedure contemplated under Section 116 Cr.P.C. The Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Udayarpalayam, has merely stated that the petitioners admitted the charge and then executed the bond. There is no material produced like, the written admission of the petitioners to show that the petitioners admitted the charge. Therefore, in the absence of the proper inquiry, without giving sufficient opportunity to the petitioners to face the charge against them and defend their case, this Court is of the considered view that the order directing the petitioners to execute the bond was made without proper inquiry and without giving proper opportunity to explain the case of the petitioners and therefore, the bonds executed in M.C.No.05(Cr.P.C.) 2022 (U/s.106 & 107 Cr.P.C) dated 10.09.2022, 10.09.2022, 10.09.2022, 10.09.2022, 10.09.2022, 10.09.2022, 10.09.2022, 19.09.2022 & 16.09.2022, respectively are liable to be set aside and accordingly set aside.



Crl.O.P.No.26525 of 2022

8. Accordingly, these Criminal Original Petitions are allowed.

Consequently, connected miscellaneous petitions are also closed.

09.12.2022

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

To:

1. The Sub-Divisional Magistrate -cum-
Revenue Divisional Officer,
Udayarpalayam, Ariyalur District.

2. The Inspector of Police,
Andimadam Police Station,
Ariyalur District.

3. The Public Prosecutor,
High Court of Madras.



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Crl.O.P.No.26525 of 2022

G.CHANDRASEKHARAN, J.
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