



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.5569 of 2022

&

Crl.M.P(MD)No.3949 of 2022

V.Hariharan

... Petitioner

Vs.

1. The State represented by
The Second Class Administrative Magistrate
cum Revenue Tahsildar,
Kamuthi Taluk,
Ramanathapuram District.

2. The Sub Inspector of Police,
Kokilanpuram Police Station,
Kamuthi Taluk,
Ramanathapuram District.
(Crime No.3 of 2022)

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records of the impugned show cause Notice in M.C.No.4 of 2022, dated 15.02.2022, on the file of the Second Class Administrative Magistrate cum Revenue Tahsildar, Kamuthi taluk, Ramanathapuram district and quash the same as illegal.

For Petitioner : Mr.T.C.Thirupathi Chellasamy

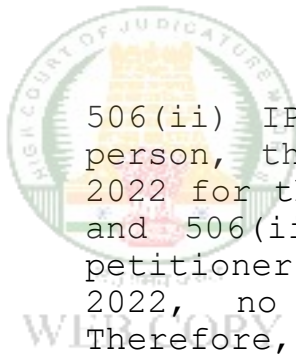
For Respondents : Mr.R.M.Anbunithi

Additional Public Prosecutor (Criminal Side)

ORDER

This Criminal Original Petition has been filed to quash the impugned show cause Notice in M.C.No.4 of 2022, dated 15.02.2022, on the file of the Second Class Administrative Magistrate cum Revenue Tahsildar, Kamuthi Taluk, Ramanathapuram District, thereby, directing the petitioner why should not he executed the bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) for a period of one year under Section 110 Cr.P.C.

2. The case of the prosecution is that the petitioner is the complainant in Crime No. 2 of 2022 registered as against the accused persons for the offences under Sections 147, 148, 294(b), 323 and



506(ii) IPC. On the counter complaint received from the accused person, the respondent police registered an FIR in Crime No.3 of 2022 for the very same offences under Sections 147, 148, 294(b), 323 and 506(ii) IPC as against his father and also implicated the petitioner as accused. Admittedly, except the case in Crime No.3 of 2022, no other case is pending as against the petitioner. Therefore, he is not a habitual offender and also he is a B.A - II year student and he is studying in Arts College, Arupukkottai. Immediately, after the registration of FIR, the second respondent requested the first respondent to initiate proceedings under Section 110 Cr.P.C as if the petitioner is a habitual offender. On receipt of the same, the first respondent, without even verifying the previous cases involved by the petitioner and without even satisfying with regard to the substance of the information received from the second respondent mechanically issued the impugned notice under Section 110 Cr.P.C. It is relevant to extract the provision under Section 110 Cr.P.C as follows:-

"110. Security for good behaviour from habitual offenders- When [an Executive Magistrate.] receives information that there is within his local jurisdiction a person who-

(a) is by habit a robber, house-breaker, thief, or forger, or,

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of-

(i) any offence under one or more of the following. Acts, namely:-

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(c) the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952);



(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962);

(h) the Foreigners Act, 1946 (31 of 1946); or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit."

3. Admittedly, the petitioner is not a habitual offender. He involved only one case that the counter complaint lodged by the counter parties. Therefore, the impugned notice cannot be sustained as against the petitioner and it is liable to be quashed.

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

Sd/-

Assistant Registrar (AD.I)

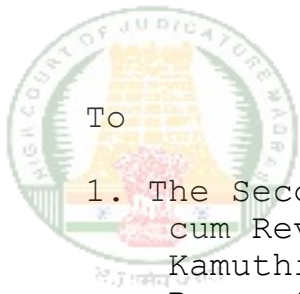
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Sub Assistant Registrar(CS)

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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 Administrative Magistrate
cum Revenue Tahsildar,
Kamuthi Taluk,
Ramanathapuram District.
2. The Sub Inspector of Police,
Kokilanpuram Police Station,
Kamuthi Taluk,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P(MD)No.5569 of 2022 &
CrI.M.P(MD)No.3949 of 2022
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RD(22.04.2022) 4P 4C