



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.06.2022
Delivered on : 28.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P (MD)No.9101 of 2022

and

W.M.P (MD)No.6565 & 6566 of 2022

Chitti Babu

...Petitioner

Vs.

1.The Divisional Executive Magistrate and
Sub Collector,
Sivakasi Revenue Division,
Sivakasi,
Virudhunagar District.

2.The Inspector of Police,
Sivakasi Town Police Station,
Sivakasi,
Virudhunagar District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the first respondent in LIR No.6/2022 dated 07.04.2022 and quash the same.

For Petitioner : Mr.S.M.Anantha Murugan
For Respondents : Mr.M.Sakthikumar
Government Advocate (crl.side)

O R D E R

Challenging the impugned order passed by the first respondent/Divisional Executive Magistrate and Sub-Collector, Sivakasi, in LIR No.6/2022 dated 07.04.2022, the present writ petition has been filed.

2.The learned counsel appearing for the petitioner submitted that the petitioner is working as Service Manager in Mukesh Honda Showroom, Sivakasi, Virudhunagar District and his wife is also working as Spare in-charge in the said Showroom. Everyday, the



showroom will be opened at 09.00 a.m and closed at 7.30 p.m. In such circumstances, the petitioner had received the impugned order of the first respondent dated 07.04.2022. By the impugned proceedings, the first respondent, by invoking his power under Section 113 Cr.P.C, called for the petitioner to attend the enquiry under Section 107 Cr.P.C on 22.04.2022 at about 11.00 a.m at the first respondent's office. In the impugned proceedings, the petitioner's name is mentioned as Serial No.8. The learned counsel further submitted that the petitioner has not involved in any criminal case in his life. The impugned notice dated 07.04.2022 under Section 107 Cr.P.C under challenge is void, and the proceedings against the petitioners is nullity and without any jurisdiction as substance of information received as required is incomplete and ambiguous. Notice without substance of information vitiate the proceedings. Failure to comply with the mandatory requirements of Section 111 Cr.P.C vitiates the preliminary order consequently, the proceeding. Hence, the learned counsel pleaded to quash the impugned summons.

3.The learned Additional Public Prosecutor appearing for the respondents contended that in the impugned notice, adequate information is given to the petitioners, it is enough to the person notified to defend himself against the allegations. When they had clear notice of the case against them, there may not be any prejudice. Hence, he pleaded to dismiss the original petition.

4.I have considered the matter in the light of the submissions made by the parties.

5.The impugned notice is ordered by the Divisional Executive Magistrate and Sub-Collector on 07.04.2022 under Section 113 Cr.P.C. On perusal of the impugned notice, it is seen that the proceedings under Section 107 is instituted by a preliminary order under Section 111 Cr.P.C, which shall comply the following conditions:-

(i) the order must be written

(ii) substance of information against the person must be disclosed

(iii) the amount of bond, period for the bond, number, character and class of sureties must be disclosed in the preliminary order under Section 111 Cr.P.C

6.The issue of notice under Section 111 Cr.P.C is judicial act, the object behind this notice is being to enable the person to prepare for the defence. After the order is served, an enquiry is to be held under Section 116 Cr.P.C. After concluding enquiry, the Divisional Executive Magistrate and Sub-Collector, Sivakasi then pass final order. Unless the Divisional Executive Magistrate and Sub-Collector, Sivakasi place with the mandatory requirements of the



provisions of law under Section 111 Cr.P.C, they will have no jurisdiction to direct the person to proceed against to appear before him or to secure their persons for the purpose of enquiry.

7.In the instant case, the impugned summon dated 07.04.2022 mentioning only vague information about the complaint/information given by the Sub-Inspector of Police, substance of information received as required is incomplete. Thus, the notice without substance of information nullify the proceeding. The failure to comply with the mandatory requirements of setting forth, the substance of information under Section 111 Cr.P.C vitiate the notice/order and consequently, the proceeding would be quashed.

8.Further, a perusal of the impugned notice, it is seen that the Divisional Executive Magistrate and Sub-Collector, Sivakasi called the petitioner to appear certain enquiry on 22.04.2022. Now, the said date is over. Hence, the impugned proceeding is quashed.

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

Sd/-

Assistant Registrar (CS II)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

skn

To

1.The Divisional Executive Magistrate and
Sub Collector,
Sivakasi Revenue Division,
Sivakasi,
Virudhunagar District.

2.The Inspector of Police,
Sivakasi Town Police Station,
Sivakasi,
Virudhunagar District.

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

+1 CC to M/s.S.M. ANANTHA MURUGAN, Advocate (SR-28613[F] dated 28/06/2022)

W.P(MD)No.9101 of 2022

and

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