



*Crl.O.P.(MD) No.11325 of 2022*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

|              |            |
|--------------|------------|
| Reserved on  | 24.06.2022 |
| Delivered on | 29.06.2022 |

CORAM:

**THE HONOURABLE MR.JUSTICE V.SIVAGNANAM**

Crl.O.P.(MD) No.11325 of 2022

and

Crl.M.P(MD)No.7127 of 2022

Iyyappan

...Petitioner

Vs.

1.The II Class Executive Magistrate  
Radhapuram,  
Tirunelveli District.

2.The Inspector of Police,  
Panagudi Police Station,  
Tirunelveli District.

... Respondents

**PRAYER:** Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the summon in A2/M.C.No. 53/2022 passed by the first respondent dated 25.05.2022 and quash the same.



*Crl.O.P.(MD) No.11325 of 2022*

For Petitioner : Mr.C.Susikumar  
For Respondents : Mr.E.Antony Sahaya Prabahar  
Addl. Public Prosecutor

### **ORDER**

This petition is filed to quash the proceedings initiated by the first respondent in A2/M.C.No.53/2022 dated 25.05.2022 as against the petitioner under Sections 113 of Cr.P.C.

2.The learned counsel appearing for the petitioner submitted that the petitioner received a summons under Section 113 Cr.P.C from the first respondent without issuing any preliminary proceedings and show cause notice under Section 111 Cr.P.C. For compliance of 107 Cr.P.C straightaway, summons under Section 113 Cr.P.C has been issued. It is clear violation of the provisions. Hence, the learned counsel seeks to quash the summons for not following the procedure as contemplated under Section 107 r/w 111 Cr.P.C.

3.The learned Additional Public Prosecutor appearing for the respondent submitted that this summons has been issued under Section



*Crl.O.P.(MD) No.11325 of 2022*

113 Cr.P.C, but before issuing that summons under Section 113 Cr.P.C, the Executive Magistrate has not issued any notice under Section 111 Cr.P.C.

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

5.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 II Class Executive Magistrate, then pass final order. Unless the II Class Executive Magistrate 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. In this case, the first respondent had not issued any notice under Section 111 Cr.P.C. Therefore, the impugned summons dated 25.05.2022 is issued not following the procedure as contemplated under Section 111 Cr.P.C, therefore, it is liable to be quashed.



*Crl.O.P.(MD) No.11325 of 2022*

WEB COPY

6. Accordingly, this Criminal Original Petition is allowed and the impugned proceedings in A2/M.C.No.53/2022 dated 25.05.2022 on the file of the first respondent/II Class Executive Magistrate, Radhapuram is hereby quashed. Consequently, connected miscellaneous petition is closed.

**29.06.2022**

Internet: Yes

Index: Yes/No

Speaking/Non speaking order  
skn

To

1. The II Class Executive Magistrate  
Radhapuram,  
Tirunelveli District.

2. The Inspector of Police,  
Panagudi Police Station,  
Tirunelveli District.

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



WEB COPY



*Crl.O.P.(MD) No.11325 of 2022*

V.SIVAGNANAM, J.

skn

Crl.O.P.(MD) No.11325 of 2022  
and  
Crl.M.P(MD)No.7127 of 2022

29.06.2022