



Crl.O.P.(MD) No.15121 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2022

CORAM

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

CRL.O.P (MD) No.15121 of 2022

and

Crl.M.P(MD) Nos.9897 & 9898 of 2022

Abubackar @ Kozhi Aliyar

... Petitioner

Vs

1. The Executive Magistrate cum
The Deputy Commissioner of Police,
East, Tirunelveli City,
Tirunelveli – 11.

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

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the proceedings issued by the respondent in EMC (E) No.104/2022, dated 29.06.2022 passed by the first respondent U/s 110 Cr.P.C r/w 113 of Cr.P.C.

For Petitioner : Mr.S.Vashik Ali

For Respondents : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)



Crl.O.P.(MD) No.15121 of 2022

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ORDER

This Criminal Original Petition is filed to quash the impugned proceedings in EMC (E) No.104/2022, dated 29.06.2022 passed by the first respondent U/s 110 Cr.P.C r/w 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 impugned proceedings.

3.The learned Government Advocate (criminal side) appearing for the respondent submitted that this summons has been issued under Section 113 Cr.P.C, but before issuing that summons under Section 113 Cr.P.C, the Executive Magistrate-cum-the Deputy Commissioner of Police has not issued any notice under Section 111 Cr.P.C. He further submitted that a



Crl.O.P.(MD) No.15121 of 2022

copy of the order passed under Section 110 of Cr.P.C. was not served along with impugned order as required under Section 111 of Cr.P.C.

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

5. On perusal of impugned order, it is seen that the first respondent has issued impugned summon under Section 113 of Cr.P.C., calling upon the petitioner to appear before the first respondent for enquiry on 07.07.2022. According to the petitioner, no notice has been passed under Section 111 of Cr.P.C. A perusal of notice, it is clearly evidenced that no notice was passed by the first respondent, under Section 111 of Cr.P.C.

6. Further, a perusal of the impugned notice, it is seen that the the Executive Magistrate-cum-Deputy Commissioner of Police called the petitioner to appear certain enquiry on 07.07.2022. Now, the said date is over. Hence, the impugned proceedings is liable to be quashed.



Crl.O.P.(MD) No.15121 of 2022

7. Accordingly, this Criminal Original Petition is allowed. The impugned summon dated 29.06.2022 on the file of the Executive Magistrate-cum- the Deputy Commissioner of Police, is hereby quashed. Consequently, connected miscellaneous petitions are also closed.

24.08.2022

Internet:Yes./No

Index:Yes/no

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To

1. The Executive Magistrate cum
The Deputy Commissioner of Police,
East, Tirunelveli City,
Tirunelveli – 11.
2. The Inspector of Police,
Melapalayam Police Station,
Tirunelveli,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD) No.15121 of 2022

V.SIVAGNANAM, J.

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ORDER IN
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