



Crl.R.C.(MD).No.833 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2022

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THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.833 of 2022
and Crl.M.P.(MD).No.10401 of 2022

G.Muthusamy

.. Petitioner

Vs.

The Sub-Divisional Magistrate and
Revenue Divisional Officer,
Paramakudi,
Ramanathapuram District.

.. Respondent

PRAYER: This Civil Revision Case is filed under Sections 397 (3) r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order, dated 13.08.2022 in ROC.No.A2/7918/2022, passed by the respondent u/s.133 of the Cr.P.C. as illegal.

For Petitioner : Mr.S.Venkatasubramaniyan

For Respondent : Mr.S.Manikandan
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed against the order passed by the respondent in ROC.No.A2/7918/2022, u/s.133 of the Cr.P.C., dated 13.08.2022.



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2.The proceedings has been initiated under Section 133 Cr.P.C., stating that this petitioner is involved in illicit Sale of Drinking Water and some illegality has been committed by him. Reading of the order shows that there is complete non-application of mind. It has been stated that on 13.08.2022, preliminary order has been passed and the above said preliminary order is reasonable and proper and that the order has been made absolute on the same day itself with a direction to the petitioner to obey the order on or before 28.08.2022. According to the learned counsel for the petitioner, it is a final order and no preliminary order has been passed before the above said order and no enquiry was undertaken as contemplated under Section 133 of Cr.P.C.

3.The learned Additional Public Prosecutor appearing for the respondent submitted that only summon has been issued to the petitioner on 13.08.2022 vide preliminary order and subsequently, it was made absolute on the same day itself. So the procedure has been followed properly. According to the learned Additional Public Prosecutor, statement of witnesses has been recorded on 25.08.2022. The learned Additional Public Prosecutor circulated a copy of the statement recorded from the petitioner and other persons similarly placed. As per the statement given by the



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petitioner, it has been stated that on 13.08.2022, the District Collector, Ramanathapuram has issued an order stating that on the basis of the complaint given by some of the Villagers action has been initiated under Section 133 Cr.P.C., and undertaking has been obtained on 20.08.2022.

4.The learned counsel for the petitioner submitted that subsequent to the filing of the above this petition, he has been taken to the respondent office and have obtained such a statement. Even though subsequent happenings are there, the procedure has not been properly followed. For that purpose, the learned counsel for the petitioner relied upon a decision of this Court in **P.Sathish @ Sathish Kumar Vs. State represented by the Inspector of Police**, reported in **2019 (2) MWN (Cr.) 136** and the relevant passages are extracted herein.

“1.Notice to be sent to the person by the Executive Magistrate to show cause as to why action under Section 122(1)(b) of Cr.P.C should not be taken for breach of the bond executed under Section 117 Cr.P.C on a date fixed.

2.At the enquiry, the Executive Magistrate should furnish the person the materials sought to be relied upon, including statements of witnesses, if any, in the vernacular (if the person is not knowing the language other than his mother tongue).



3.If the person wishes to engage an Advocate to represent him at the enquiry, an opportunity to have a counsel of his choice should be provided to him.

4.The Executive Magistrate shall inform the person about his right to have the assistance of a lawyer for defending him in the enquiry.

5.The enquiry shall be conducted by the Executive Magistrate on the notified date or such other date as may be fixed and the person should be allowed to participate in the same.

6.At the enquiry, an opportunity should be given to the person to :(i) Cross-examine the official witnesses, if any and (ii) produce documents and witnesses, if any, in support of his case.

7.Such Executive Magistrate or his successor in office, should then, apply his mind on the materials available on record, in the enquiry, and pass speaking order.

8.An order under Section 122(1)(b) of Cr.P.C should contain the grounds upon which the Executive Magistrate is satisfied that the person has breached the bond.

9.A copy of the order should be furnished to the person along with the materials produced at the enquiry.

10.The enquiry, as far as possible shall be completed within 30 days and at no circumstances, the enquiry shall be adjourned unnecessarily. The advocates, who appear on behalf of the persons concerned, are expected to co-operate with the



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enquiry process for its expeditious completion.”

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5.In view of the above, this petition is liable to be allowed and accordingly, allowed and the 133 Cr.P.C. proceedings initiated by the respondent in ROC.No.A2/7918/2022, dated 13.08.2022, is hereby quashed. However, liberty is granted to the respondent herein to initiate fresh action, if so required, by following the procedure that has been set out in the above said Judgment. Consequently, connected miscellaneous petition is closed.

08.09.2022

Index : Yes / No
Internet : Yes / No
TM

To

- 1.The Sub-Divisional Magistrate and Revenue Divisional Officer,
Paramakudi, Ramanathapuram District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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