



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15.02.2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.16071 of 2019

and

Crl.MP(MD)Nos.9571 and 9573 of 2019

S.Karuppaiah : Petitioner/Respondent
Vs.

1.The II Class Executive Magistrate-cum-
Thasildar,
Kadaladi, Ramanathapuram District.

2.The Sub Inspector of Police,
Elamchembur Police Station,
Ramanathapuram District.

: Respondents/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the impugned proceedings in Miscellaneous Case No.95/2019, dated 07/08/2019 on the file of the 1st respondent and Quash the same.

For Petitioner : Mr.G.Mohankumar
For Respondents : Mr.P.Kottai Chamy
Government Advocate
(Criminal side)

O R D E R

This petition is filed seeking quashment of the proceedings initiated under Sections 117 Cr.P.C. against these petitioner.

2. In a batch of Criminal Original Petitions in Crl.O.P.(MD) Nos.21560 of 2018 and batch, a common question of law and fact arose. The discussion in the aforesaid batch of Criminal Original Petition runs like this.

"4.... Way back in 1980, the Hon'ble Supreme Court in the judgment reported in **AIR 1981 SC 674 (Gopalanachari Vs. State of Kerala)**, has observed the ill-effect of Section 110 Cr.P.C. Paragraph No.5 of the said judgment is extracted hereunder:

"A closer look at Section 110 of the Code in the setting of peril to personal liberty thus becomes a



necessity in this case. Counsel for the State, Shri Francis, amicus curiae Shri Abdul Kader and Senior Advocate Shri Tarkunde, agreed that unless the preventive power under Section 110 were prevented from pervasive misuse by zealous judicial vigilance and interpretative strictness, many a poor man, maybe cast into prison by sticking the label of 'habitual' or by using such frightening expressions as 'desperate', 'dangerous' and 'hazardous to the community'. Law is what the law does, even as freedom is what freedom does. Going by that test, Section 110 cannot be permitted in our free Republic to pick up the homeless and the have-nots as it did when under British subjection because to-day to be poor is not a crime in this country. George Bernard Shaw, though ignorant of 110, did sardonically comment that "the greatest of evils and the worst of crimes is poverty".

5. After analyzing the provisions in the light of Article 21 of the Constitution of India, the Hon'ble Supreme Court in the concluding paragraph has observed as under:-

"Let us allay misunderstandings. We are clear in our mind that prevention is better than cure, in criminal law as in medicines, especially when there is judicial supervision. Society cannot be left at the mercy of predators and bandits who, like wild beasts, prey upon the weak and the innocent and become a menace to peace and security of society. But liberty is a prized value and that is why we have insisted not merely upon the Police having to be careful before marching poor people into court under Section 110 but the Court itself having to be gravely concerned about using preventive provisions against helpless persons, not on formal testimony readily produced to order as we have noticed in a recent case, [Prem Chand Vs. Union of India, Writ Petition No.3050 of 1980 decided on 11.11.1980, MANU/SC/0191/1980:1981 CriL J5 (SC)] but on convincing testimony of clear and present danger to society."

6. So, with this cautious note struck by the Hon'ble Supreme Court way back in 1980, while approaching the matter under dispute, we will go to the second judgment with regard to the consequences of dropping of proceedings or execution of the bond for a particular period. The Hon'ble Supreme Court in the case of **Ram Narain Singh and others Vs. State of Bihar** reported in **AIR 1972 SC 2225**, in paragraph No.6, has observed like this.

"6.....We may at the outset state that we find it difficult to accede to the submission made by Mr. Singh that once the period for which bond was ordered to be executed has expired, the order becomes nugatory and the proceedings under section 107 of the Code of Criminal Procedure must be dropped. The proceedings under section 107 of the Code, in our opinion, can continue despite the fact that the period for which the bond was required to be



executed has expired. To hold otherwise would lead to the result that the proceedings under the section would have, to be dropped if the person proceeded against succeeds in protecting the proceedings, even though the apprehension of breach of peace or disturbance of public tranquillity still persists. At, the same time, the court is not precluded from taking into account,, the subsequent events. If the material on record discloses that though there was a danger of breach of peace it one time, because, of the happening of a subsequent event the danger of breach of peace has disappeared, the court can drop the proceedings and discharge the person proceeded against. Even in the absence of some positive evidence of reconciliation between the opposing parties, if the court finds that since, the date of incident complained of, a very long period has elapsed during the course of which nothing untoward has happened. the court may well draw the inference that the danger of breach of peace has vanished. "

7. This judgment guides us further to the effect that if there is a long gap between the incident, that can be taken into account. Even if the period, for which, the bond has been executed, expired, the proceedings may not be dropped. So, subsequent events can be taken into account and simply because the bond was required to be expired, the proceedings need not be dropped.

8. Now, we will go to the Full Bench decision of the Bombay High Court in the case of **Farhan Nasir Khan Vs. State of Maharashtra and others** reported in **2020 (206) AIC 279**.

9. The questions that has been referred to before the Hon'ble Full Bench are that i) whether before issuing the show cause notice under Section 111 of Cr.P.C., whether separate order must be passed by the Magistrate.

ii) Whether the aforesaid order must accompany the show cause notice issued under Section 111 of Cr.P.C.

iii) If the show cause notice, which is in writing and which sets forth (i) the substance of the information received, (ii) amount of the bond, (iii) term for which it is to be in force, (iv) number character and class sureties, if any, is required and (v) grounds for apprehending breach of peace or disturbance of public tranquillity, whether a separate order must be passed.

10. The Hon'ble Full Bench after going through the entire evidence came to the conclusion that the Magistrate has to form an opinion in writing as contemplated by Section 111 of Cr.P.C. and thereafter, proceed to issue the show cause notice as contemplated by Section 107 of Cr.P.C. and along with the show cause notice, the opinion must be annexed. It can also be done in the notice itself by integrating all the aforesaid facts.



11. Further explaining purpose of the notice, it is observed that the noticee must know the factual matrix comprising either in the complaint or in the information received and the reasons for the opinion of the Magistrate. So, according to the Hon'ble Full Bench decision, the purpose of the notice is to inform the noticee with regard to all relevant facts as stated above for the purpose of giving him a fair and full opportunity to put forth his explanation. So, this judgment of the Hon'ble Full Bench of Bombay High Court further guides as to the issue.

12. This position has been clarified in the famous case of the Hon'ble Supreme Court reported in **AIR 1971 SC 2486 (Madhu Limaye Vs. S.D.M. Monghyr)**. In paragraph Nos. 36 and 37 of the aforesaid judgment, it has been observed as under:-

"We have seen the provisions of Section 107. That section says that action is to be taken in the manner herein-after provided and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public. In this very case the Apex Court went on to observe in Para 37 as under:-

Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquillity at his hands. Although the section speaks of the 'substance of the information' it does not mean the order should not be full. It may not repeat the information bodily but it must give proper notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word 'substance' means the essence of the most important parts of the information."

13. Way back in 1909, the very same Bombay High Court in a Full Bench decision reported in **MANU/MH/0054/1909 (Suleman Adam Vs. Emperor)** deals about the old provisions of the Code of Criminal Procedure. There is a specific provision to the effect that summons issued under Section 114 of Cr.P.C. must be accompanied by a copy of the order made under Section 112 of Cr.P.C. It appears that this mandatory requirement has been brought by way of a judicial order by the Hon'ble Bombay High Court in the Farhan Nasir Khan's judgment (referred supra). Now, the position is very



clear to the effect that the notice must accompany the material that has been mentioned by the Hon'ble Full Bench of the Bombay High Court.

14. With this backdrop in my mind, we will go to the judgment of our High Court.

15. Even though the judgment reported in **MANU/TN/0706/2017** in the case of **M.Krishnamurthy and others Vs. Sub Divisional Magistrate cum Revenue Divisional Officer and others** is frequently quoted and followed, after the aforesaid case, a more comprehensive discussion has been made in CrI.R.C.No.78 of 2020 dated 25.09.2020. As I mentioned earlier, this is very comprehensive in nature.

16. The discussion starts from the colonial error cases, wherein, the proceedings were initiated against V.O.Chidambaram Pillai under Section 107 of Cr.P.C. Section 107 Cr.P.C. deals with the security for keeping the peace. Section 110 deals about the security for good behavior from habitual offenders.

17. A Full Bench Judgment of this Court in the case of **Yeluchuri Venkatachennaya and others Vs. Emperor** reported in **AIR 1920 Madras 337** would conclude that the proceedings under Section 107 Cr.P.C. is equal to trial proceedings. There is one legal assistance was also permitted. So that proposition of law was followed till date.

18. In **AIR 1971 Ker 280 (FB) (Thekkittil Gopalankutti Nair Vs. Melepurath Sankunni Ezhuthaseah)**, it has been observed that proceedings under Sections 107 to 110, 133, 144, 145 and 488 of Cr.P.C. are the judicial proceedings in nature. It is further observed that the term 'breach of peace' requires subjective satisfaction as basis and insofar as the term 'good behavior' is concerned, it rests upon objectivity. So, except class (g) of Section 110 Cr.P.C., the existence of a previous case is a requirement under Section 110 of Cr.P.C. So, in that case, the power of the Deputy Commissioner of Police was questioned. Whether he was a competent person to initiate the proceedings was under discussion.

19. Now going back to the aforesaid M.Krishnamurthy's judgment. 4 questions were formed and the same has been extracted hereunder:-

"(a) Is a previous incident a sine qua non for initiating Section 107 Cr.P.C. proceedings?

(b) Can proceedings under Section 107 Cr.P.C. be initiated even before an incident that is likely to disturb the peace or public tranquillity takes place?

(c) Should a show cause order issued under Section 107 Cr.P.C. reflect that the Magistrate has assessed the truth of the information and the need for taking action?

(d) Can a show cause order under Section 107 Cr.P.C. be per se subjected to judicial review?"



20. In the aforesaid Madhu Limaye's judgment, the Hon'ble Division Bench has observed as under:-

"47. The gist of the Chapter is the prevention of crimes and disturbances of public tranquillity and breaches of the peace. There is no need to prove overt acts although if overt acts have taken place they will have to be considered. The action being preventive is not based on overt act but on the potential danger to be averted. These provisions are thus essentially conceived in the interest of public order in the sense defined by us. They are also in the interest of the general public. If prevention of crimes, and breaches of peace and disturbance of public tranquillity are directed to the maintenance of the even tempo of community life, there can be no doubt that they are in the interest of public order."

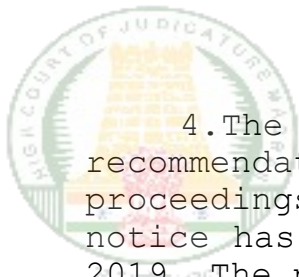
21. Regarding the 1st question, it has been answered that previous incident is not a sine qua the breach of peace. The likelihood of breach of peace is enough to initiate the proceedings under Section 107 Cr.P.C.

22. Regarding the 2nd question, it has been answered that the proceedings can be initiated even before the incident that is likely to disturb the peace and tranquility takes place.

23. Regarding the 3rd question, it has been answered that the subjective opinion at the stage of Section 107 of Cr.P.C cannot be a matter for judicial review. So, all these questions were answered to the effect that the truth of the information can be tested only in the Enquiry under Section 116 of Cr.P.C.

24. Regarding the 4th question, it has been answered that the order must contain substance of the information received. The information is necessary for the noticee to challenge the allegations. A 'substance' here means the essence of the information that has been received by the Magistrate from the police or otherwise. Since in the conclusion paragraph, it has been observed that if preventive action proceedings are not interfered at the threshold, there is every likelihood of tempers cooling down during the proceedings before the Executive Magistrate. So the Courts must be very slow in interfering with an order passed under Section 111 of Cr.P.C. The Society is the ultimate sufferer, if the order passed under Section 111 of Cr.P.C. is interfered needlessly on the ground of protracting the individual rights. We came to an end of discussion with regard to the requirements of law. With this backdrop in my mind, now we are going to the individual case on hand."

3. In the light of the aforesaid observations, now we will take the present cases for discussion.



4.The case of the petitioner is that on the basis of the recommendation made by the 2nd respondent herein, the impugned proceedings have been initiated by the 1st respondent herein and notice has been issued under Section 111 of Cr.P.C. in M.C.No.95 of 2019. The petitioner is not involved in any previous bad antecedent.

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5.In the earlier occasion, a similar proceeding has been issued by the 1st respondent and it came to be challenged in Crl.O.P.(MD) No.9689 of 2020 and this Court, by order dated 14.09.2020, has quashed the impugned proceedings on the ground that before issuing the impugned notice, proper procedure has not been complied with. The judgment of this Court in the case of **M.Krishnamurthy Vs. Sub Divisional Magistrate cum Revenue Divisional Officer** reported in **2017 1 Mad WN (Cri) 199** was not followed.

6. The impugned notice is dated 07/08/2019, wherein, it has been stated that on the basis of the recommendation made by the 2nd respondent herein, the proceedings have been initiated and in the recommendation, it has been stated that the petitioner is indulging in activities, which are prejudicial to the public peace. So, as stated above, it is seen that this impugned notice does not satisfy any of the requirements that has been set out above.

7.In spite of the earlier order passed by this Court in the aforesaid Crl.O.P.(MD) No.9689 of 2020, still the authorities are adopting the very same ambiguous procedure. It is not in the interest of the public.

8.With the aforesaid observation, the impugned notice dated 07/08/2019 is liable to be quashed and accordingly, it is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (As)

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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 II Class Executive Magistrate-cum-
Thasildar,
Kadaladi, Ramanathapuram District.

2.The Sub Inspector of Police,
Elamchembur Police Station,
Ramanathapuram District.

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

+1 CC to M/s.G.MOHAN KUMAR, Advocate (SR-6585[F] dated
16/02/2022)

Crl.OP(MD)No.16071 of 2019
15.02.2022

MGJ(16.03.2022) 8P 5C