



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.20725 of 2021
and
Cr.M.P. (MD)No.11819 of 2021

1.M.Thangamalai
2.G.Suresh Pandi
3.A.Vadivel

... Petitioners

Vs.

1.Sub Divisional Executive Magistrate-cum-
Revenue Divisional Officer,
Usilampatti,
Madurai District.

2.The Sub Inspector of Police,
T.Kallupatti Police Station,
Madurai District.

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to Na.Ka.A1/2732/2021, dated 22.10.2021 on the file of the first respondent and quash the same.

For Petitioners : Mr.M.Musthafakhan

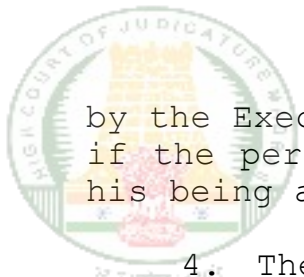
For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondents.

2. The first respondent had issued the impugned summons calling upon the petitioners to appear before him for the purpose of conducting an enquiry under Section 110 Cr.P.C. To quash the said summons, this Criminal Original Petition has been filed.

3. As rightly pointed out by the learned counsel appearing for the petitioners, the power under Section 110 Cr.P.C can be invoked



by the Executive Magistrate only in the case of habitual offender or if the person concerned is so desperate and dangerous as to render his being at large hazardous to the community.

4. The expression "habitual offender" has been defined in Section 2(4) of the Tamil Nadu Restriction of Habitual Offenders Act, 1948 in the following terms:

*"2(4) **"habitual offender"** means a person who before or after the commencement of this Act has been sentenced to a substantive term of imprisonment. Such sentence not having been set aside in appeal or revision. On not less than three occasions for any one or more of the schedule offences each of the subsequent sentences having been passed in respect of an offence committed after the passing of the sentence on the previous occasion;"*

5. In the case on hand, the first petitioner is shown as a accused in Crime No.262 of 2021 registered on the file of T.Kallupatti Police Station, for the offences under Section 379 IPC and under the provisions of Mines and Minerals (Development and Regulation) Act, 1957. Against the petitioners 2 and 3, no criminal case has been registered. Even the first petitioner has not suffered any substantial term of imprisonment. Therefore, invocation of the power under Section 110 Cr.P.C against the petitioners herein is clearly out of jurisdiction. The impugned proceedings stand quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

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.Sub Divisional Executive Magistrate-cum-
Revenue Divisional Officer,
Usilampatti,
Madurai District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Sub Inspector of Police,
T.Kallupatti Police Station,
Madurai District.

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

+1 CC to M/s.S.MUSTHAFAKHAN, Advocate (SR-1553[F] dated
12/01/2022)

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RD(25.01.2022) 3P 5C