



Crl.R.C.Nos.136 & 140 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.01.2023

PRONOUNCED ON : 02.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.Nos.136 & 140 of 2023

and

Crl.M.P.Nos.1016 & 1023 of 2023

Crl. R.C.No.136 of 2023

Vive @ Vikram @ Vikraman

... Petitioner

Vs.

1. The Sub-Divisional Magistrate,
Karaikal.

2. The Station House Officer,
Neravy Police Station,
Neravy.

... Respondents



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Crl. R.C.No.140 of 2023

Ezhilarasi @ Meena

... Petitioner

Vs.

1. The Sub-Divisional Magistrate,
Karaikal.

2. The Station House Officer,
Neravy Police Station,
Neravy.

... Respondents

PRAYER in Crl.R.C.No.136 of 2023 : Criminal Revision Case filed under Section 397 r/w.407 of Cr.P.C. to call for the records in M.C.No.207 of 2022 pending on the file of the first respondent and set-aside the order dated 28.12.2022 in M.C.No.207 of 2022 as against the petitioner.

PRAYER in Crl.R.C.No.140 of 2023 : Criminal Revision Case filed under Section 397 r/w.407 of Cr.P.C. to call for the records in M.C.No.206 of 2022 pending on the file of the first respondent and set-aside the order dated 28.12.2022 in M.C.No.206 of 2022 as against the petitioner.

For Petitioner
in both cases

: Mr. R. Vivekananthan

For Respondents
in both cases

: Mr. V. Ramachandramurthy,
Addl. P.P.(Puducherry)



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COMMON ORDER

Challenging the Prohibitory order passed by the first respondent in M.C.Nos.207 & 206 of 2022, dated 28.12.2022 the present Criminal Revision cases are filed.

2. Since the issue involved in both the revision petitions are one and the same, both the Criminal Revision Petitions are disposed of by way of a common order.

3. The brief averment of the fact is that the revision petitioner in Crl.R.C.No.136 of 2023 is Vive @ Vikram @ Vikraman and the petitioner in Crl.R.C.No.140 of 20213 is Ezhilarasi @ Meena. Both the parties have reportedly indulging in serious offences like organized murders, extortion, hurt, criminal intimidation and thereby became a perennial source of threat to the community and disturbance to the public tranquility and they are reported to be notorious rowdy elements and being watched by the police constantly in the interest of Public Order. Thereafter, the 2nd respondent by



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reference to I.R.Nos.25/2022 and 24/2022, dated 16.12.2022 sent information to the first respondent under Section 144(i)(ii)(iii) Cr.P.C for issuing order. In pursuance of the information furnished by the 2nd respondent in the above reference, and after satisfying the information passed an order under Section 144(2) Cr.P.C. to restrain him not to enter into the entire region of Karaikal District, which is under the jurisdiction of this Court for a period of two months or 60 days from the date of this order or till any further orders are passed by the competent Authority revoking this prohibition as per law, whichever is earlier except when he is summoned to attend the cases in any of the Courts in Karaikal, which is now challenged herein.

4. The learned counsel for the revision petitioners submitted that the impugned orders passed by the 1st respondent/Executive Authority are ex parte orders, without any emergent situation and without any notice and enquiry and without disclosing the material facts. Further the previous criminal records of the person are not alone foundation for invoking the



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power conferred under Section 144 Cr.P.C. The petitioners are not involved in any criminal activities during the relevant period. The restriction Order passed by the authority for the period of 2 months is unreasonable and violation of right of human as guaranteed under Article 19(1)(d) and (e) of the Constitution of India. The show cause notices were not served upon the petitioners in both the revision petitions. But, served upon one Baby, who is the mother in law of the petitioner in Crl.R.C.No.136 of 2023 and mother of the petitioner in Crl.R.C.No.140 of 2023. No attempt was made by the respondent police to comply with the statutory mandatory requirement under Section 134 of Cr.P.C. Therefore, the proceedings conducted in the absence of the petitioners and non-compliance of Section 134 of Cr.P.C would vitiate the proceedings initiated under Section 144 of Cr.P.C,. Thus pleaded to set aside the order passed by the authorities.

5. The learned counsel, to support his artgument relied upon the



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following judgments: (1) **2013 SCC Online Mad.3244 : 2014(1) LW (cri) 375 (Guna @ Vella Guna @ Gunasekaran /vs/ The District Magistrate, Gov. of Puducherry)** , (2) **Order of this Court in Cr.R.C.No.1198 of 2016 (Kumar @ Kosa Kumar @ Chandiran /vs/ The Sub-Divisional Magistrate (south), Villianur, Pondicherry & otrs)**, (3) **Order of this Court in CrI.R.C.No. 625 of 2016 (Lloo @ Lemon Anandaraj /vs/ The District Magistrate, Puducherry)** . The learned counsel also reiterated the grounds raised in the grounds of revision and thus, pleaded to allow the revision and thereby, set aside the impugned order.

6. The learned Additional Public Prosecutor(Puducherry) appearing for the State supported the order of the Authority and also contended that the petitioners are having number of criminal cases and involved in many illegal activities the hardcore criminal and detrimental to the peace and tranquility of public life and the security of the public, which is at stake due to his terrible acts. Based on the report of the Station House Officer, Neravy Police Station, and on satisfaction of the information placed before



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the Authority, he passed the order. There is no reason to interfere with the order passed by the Authority. Hence, pleaded to dismiss the Criminal Revision.

7. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available records carefully.

8. An order under Section 144 Cr.P.C., ought not to be made, without providing an opportunity to the person against whom it is proposed to make, to show cause as to why it should be passed. In view of Section 144(2) Cr.P.C, an order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *exparte*.

9. But in this case, admittedly the impugned order is passed *exparte*.



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In view of the above said provision, an exparte order can only be passed only under two circumstances, i.e. (i) in case of emergency and (ii) where the circumstances do not admit of personal service. In this case, the authority before passing impugned orders sent notice on 21.12.2022 to the petitioners, but not served upon them. But it is served to one Baby, who is mother in law of the petitioner in Crl.R.C.No.136 of 2023 and mother of the petitioner in Crl.R.C.No.140 of 2023 and the acknowledgment was signed by her on 22.12.2022, which is recorded in paragraph 6 of the impugned orders. Therefore, this fact evident the absence of emergency in passing the impugned order. Further, to meet the next condition, the circumstances do not admit of personal service. In the impugned order, the Authority had not assigned any valid reason and simply stated that the circumstances do not admit of personal service. Under these circumstances, the Authority has to follow the condition imposed under Section 134 (2) Cr.P.C.

10. Originally, an order under Section 134(2) Cr.P.C. ought to be



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made on compliance with Section 134 Cr.P.C. Section 134 of Cr.P.C. runs as follows:

(1) The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the State Government may, by rules, direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person."

11. In view of the above said provision, if the notice cannot be so served, it shall be notified by proclamation, published in such manner as the State Government may, by rules, direct and a copy thereof shall be stuck up at place or places as may be fittest for conveying the information to such person. In this case, the authority had not followed this procedure as contemplated under Section 134(2) Cr.P.C. But, passed the impugned order



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exparte. It is in violation of the mandatory requirement of Section 134 of Cr.P.C with regard to service or notification of order.

12. It is well settled principle by the Hon"ble Supreme Court that any preventive order restricts the right of freedom of movement of individual as guaranteed under Constitution of India and such right cannot be lightly interfered with, expect under due process of law by observating all the legal principles as well as the principles of natural justice. In this instant case, the respondent authority had not followed the due process of law by observing all the legal principles as well as the principles of nature justice and without serving any notice and without disclosing the material facts based on which the satisfaction is arrived by the Authority and without furnishing the copies to the accused and report to the petitioners, the exparte orders had been passed, which is unsustainable. Hence, it is liable to be setaside.

13. In the result, both the Criminal Relvision cases are allowed and



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the impuged orders passed by the first respondent are set aside.

Consequently, connected miscellaneous petitions are closed.

02.03.2023

mrp

To

1. The Sub-Divisional Magistrate,
Karaikal.
2. The Station House Officer,
Neravy Police Staltion,
Neravy.



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V.SIVAGNANAM, J.,

mrp

Pre-delivery order

in

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