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Crl.O.P.No.4755 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.4755 of 2023

and

Crl.M.P.No.3500 of 2023

P.Sankar

... Petitioner

Vs.

The State represented by

1.The Sub Divisional Magistrate
cum Sub-Collector,
Nagapattinam Revenue District.

2. The Inspector of Police,
Kilvelur Police Station,
Nagapattinam.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records quashing the summons dated on 13.02.2023 in MC.No.48 of 2023/A3 on the file of the First Respondent.

For Petitioner : Mr.A.Jotheeswaran

For Respondents : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)



ORDER

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This Criminal Original Petition has been filed to call for the records summons dated on 13.02.2023 in MC.No.48 of 2023/A3 on the file of the First Respondent and quash the same.

2. The learned counsel for the petitioner challenged the summon dated 13.02.202, issued in MC.No.48 of 2023/A3, on the following ground:-

(a) Section 110 Cr.P.C. can be invoked only against habitual offenders.

He further relied on the judgment reported in **1980 (Supp) Supreme Court Cases 649 (Gopalanachari Vs. State of Kerala)** for the proposition that the personal liberty of a person cannot be put up to struggle under section 110 Cr.P.C unless it is justified. In paragraph 6 of the judgment, it is observed as follows:

6.The constitutional survival of Section 110 depends on its obedience to Article 21, as this Court has expounded. Words of wide import, vague amplitude and far too generalised to be safe in the hands of the Police cannot be constitutionalised in the context of Article 21 read down to be as a fair and reasonable legislation with reverence for human rights. A glance at Section 110 that only a narrow signification can be attached to the words in clauses (a) to (g), "by habit a robber....", "by habit a receiver of stolen property....", "habitually protects or harbours thief....", "habitually



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commits or attempts to commit or abets the commission of ", "is so desperate and dangerous as to render his being at large without security hazardous to the community". These expressions, when they become part of the preventive chapter with potential for deprivation of a man's personal freedom upto a period of three years, must be scrutinised by the court closely and anxiously. The poor are picked up or brought up, habitual witnesses swear away their freedom and courts ritualistically commit them to prison and Article 21 is for them a freedom under total eclipse in practice. Courts are guardians of human rights. The common man looks upon the trial court as the protector. The poor and the illiterate, who have hardly the capability to defend themselves, are nevertheless not 'non-persons', the trial judges must remember, This Court in Hoskot's case has laid down the law that a person in prison shall be given legal aid at the expense of the State by the court assigning counsel. In cases under Section 110 of the Code, the exercise is often an idle ritual deprived of reality although a man's liberty is at stake. We direct the trial magistrates to discharge their duties, when trying cases under Section 110, with great responsibility and whenever the counter-petitioner is a prisoner give him the facility of being defended by counsel now that Article 21 has been reinforced by Article 39A. Otherwise the order to bind over will be bad and void. We have not the slightest doubt that expressions like "by habit", "habitual", "desperate", "dangerous", "hazardous" cannot be flung in the face of a man with laxity of semantics. The Court must insist on specificity of facts and be satisfied that one swallow does not make a summer and a consistent course of conduct convincing enough to draw the rigorous inference - that by confirmed habit, which is second nature, the counter-petitioner . is sure to commit the offences



mentioned if he is not kept captive. Preventive sections privative of freedom, if incautiously proved by indolent judicial processes, may do deeper injury. They will have the effect of detention of one who has not been held guilty of a crime and carry with it the judicial imprimatur, to boot. To call a man dangerous is itself dangerous; to call a man desperate is to affix a desperate adjective to stigmatise a person as hazardous to the community is itself a judicial hazard unless compulsive testimony carrying credence is abundantly available. A sociologist may pardonably take the view that it is the poor man, the man without political clout the person without economic stamina, who in practice gets caught in the coils of Section 110 of the Code, although, we as court, cannot subscribe to any such proposition on mere assertion without copious substantiation. Even so, the court cannot be unmindful of social realities and be careful to require strict proof when personal liberty may possibly be the casualty. After all, the judicial process must not fail functionally as the protector of personal liberty.

3. Per contra, the learned Government Advocate (Crl.Side) opposed this petition on the ground that Section 110 (g) Cr.P.C deals with a person who is so desperate and dangerous as to render his being at large without security, hazardous to the community. Petitioner is one such person. Therefore, the petitioner can be asked to furnish security for his good behaviour as per Section 110 (g) Cr.P.C.

4. Considered the rival submissions and perused the records.



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5. On going through Section 110 Cr.P.C., the heading itself shows that security can be secured from a habitual offender for ensuring good behaviour.

Section 110 Cr.P.C. reads as follows:

110. Security for good behaviour from habitual offenders

“When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment of disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the Commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any

offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the Commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets



the commission of—

(i) any offence under one or more of the following Acts, namely:—

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(c) the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952);

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962); or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as



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the Magistrate thinks fit.”

Section 110 (g) Cr.P.C discusses about the person, who is so desperate and dangerous as to render his being at large without security, hazardous to the community. To fit the petitioner under Section 110 (g), it must be established that the petitioner is so desperate and dangerous that he being at large without security would amount to hazardous to the community. No material is produced in this regard. There is also no material produced to show that petitioner is a habitual offender.

6. In the said circumstances, this Court is of the considered view that the impugned summon dated 13.02.2023 in MC.No.48 of 2023/A3, issued by the first respondent is contrary to law and liable to be quashed.

7. Accordingly, this Criminal Original Petition is allowed and the impugned summon dated 13.02.2023 in MC.No.48 of 2023/A3 on the file of the first respondent herein is hereby quashed. Consequently, connected miscellaneous petition is also closed.

08.06.2023

Index:Yes/No
Speaking/Non speaking order
gd

G.CHANDRASEKHARAN.J.,



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To

- 1.The Sub Divisional Magistrate
cum Sub-Collector,
Nagapattinam Revenue District.
2. The Inspector of Police,
Kilvelur Police Station,
Nagapattinam.
3. The Public Prosecutor,
High Court of Madras.

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