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Crl.O.P.No.9311 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.9311 of 2023
and
Crl.M.P.Nos.6042 & 6044 of 2023

Kumar @ Auto Kumar

...Petitioner

Vs.

1.The Tahsildar,
Mettupalayam Taluk,
Coimbatore District.

2.The Inspector of Police,
Karamadai Police Station,
Coimbatore District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the impugned summon issued by the 1st respondent herein in Mu.Mu.1366/2023/A7, dated 05.04.2023 and quash the same.

For Petitioner : Mr.E.Karthik Raja

For Respondents : Mr.S.Santhosh
Government Advocate (Crl. Side)



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ORDER

The Criminal Original Petition has been filed to quash the impugned summon issued by the 1st respondent herein in Mu.Mu.1366/2023/A7, dated 05.04.2023.

2.The learned counsel for the petitioner challenged the summon dated 05.04.2023, issued in Mu.Mu.1366/2023/A7, on the following two grounds.

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

(b) The show cause notice does not confirm to the requirements under Section 111 Cr.P.C.

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 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, petitioner has nine previous cases pending against him. 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. Therefore, the petitioner can be asked to furnish security for his good behaviour as per Section 110 (g) Cr.P.C.



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4.Considered the rival submissions and perused the records.

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 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.

6. Section 111 Cr.P.C. deals with order to be made by a Magistrate when acting under Sections 107, 108, 109 and 110 Cr.P.C. It shall contain an order in writing, setting forth the substance of the information received, the amount



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of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required. Perusal of the summon shows that the petitioner has involved in many criminal activities. History sheet list is maintained against the petitioner and therefore, the Inspector of Police, Karamadai Police Station, Coimbatore District had given a requisition for obtaining good conduct certificate from the petitioner. On the basis of that requisition, this summon is issued. The summon, which is impugned here, do not confirm to the requirements under Section 111 Cr.P.C., like an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required. Therefore, this Court is of the considered view that the summon does not exemplify the petitioner as a habitual offender and he is so desperate and dangerous that he cannot be allowed to reside in the Society without security.

7. In the said circumstances, this Court is of the considered view that the impugned summon dated 05.04.2023 Mu.Mu.1366/2023/A7, issued by the first respondent is contrary to law and are liable to be quashed.



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8. Accordingly, the Criminal Original Petition is allowed and the impugned summon dated 05.04.2023 Mu.Mu.1366/2023/A7, issued by the first respondent is quashed. Consequently, connected miscellaneous petitions are also closed.

27.04.2023

gd
Internet: Yes
Index: Yes/No
Speaking/Non speaking order

To:

1. The Tahsildar,
Mettupalayam Taluk,
Coimbatore District.
2. The Inspector of Police,
Karamadai Police Station,
Coimbatore District.
3. The Public Prosecutor,
High Court of Madras.

G.CHANDRASEKHARAN, J.



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