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Crl.O.P.No.25734 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.25734 of 2022

and

Crl.M.P.No.15929 of 2022

Anbu Rameshdevar

...

Petitioner

Vs.

1.The Tahsildar cum Taluk Executive Magistrate,
Office of Tahsildar,
Palladam.

2.The Inspector of Police,
Palladam Police Station,
Palladam, Tiruppur District.

...

Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records of the order dated 30.09.2022 under Section 107 of Cr.P.C. in Na.Ka.No.5275/2022/Aa2 on the file of the 1st Respondent herein and set aside the same.

For Petitioner : Mr.N.Ponraj

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



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ORDER

This Criminal Original Petition is filed to call for the records of the order dated 30.09.2022, under Section 107 Cr.P.C., in Na.Ka.No.5275/2022/Aa2, on the file of the first respondent herein and set aside the same.

2.The learned counsel for the petitioner challenged the notice issued under Section 107 Cr.P.C., the impugned proceedings, for not complying the requirements under Sections 107 and 111 Cr.P.C. He submitted that when the Executive Magistrate receives an information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

3.The Magistrate under Section 111 Cr.P.C. when acting under Sections 107, 108, 109 and 110 Cr.P.C, shall have to make an order in writing, setting forth the substance of the information received, the amount of the bond to be



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executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required. None of these ingredients are present in the impugned show cause notice. Therefore this petition.

4.The learned Government Advocate (Crl.Side) opposed this petition on the ground that the petitioner was only ordered to appear for enquiry and no order was passed. It is a pre-mature petition.

5.Considered the rival submissions and perused the records. Sections 107 (1) and 111 Cr.P.C. reads as follows:

107. Security for keeping the peace in other cases:

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.



(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

111. Order to be made:

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 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.

Combined reading of both sections shows that when acting under Section 107 Cr.P.C., an Executive Magistrate is required to make 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. This must be reflected in the show cause notice. However, in the impugned show cause notice, it is only stated that the petitioner may involve in the act that may



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endanger the public peace. It is not preceded by an order in writing setting forth the substance of the information received and other details like 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 view that the impugned show cause notice under Sections 107 is liable to be set aside and accordingly set aside.

6. In fine, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is also closed.

sli

30.01.2023

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

To:

1.The Tahsildar cum Taluk Executive Magistrate,
Office of Tahsildar,
Palladam.

2.The Inspector of Police,
Palladam Police Station,
Palladam, Tiruppur District.

3.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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