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Crl.O.P.No.32081 & 32085 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.Nos.32081 & 32085 of 2022

and

Crl.M.P.Nos.19741 & 19744 of 2022

E.Krishnamoorthy ...Petitioner in Crl.O.P.No.32081 of 2022

E.Jagadeesh Babu ...Petitioner in Crl.O.P.No.32085 of 2022

Vs.

1.The Revenue Divisional Officer,
Thirutani, Tiruvallur District.

2.The State rep by
The Sub Inspector of Police,
D-6, Pothatturpet Police Station,
Thirutani Sub Division,
Tiruvallur District.

... Respondents in both Crl.O.Ps

COMMON PRAYER: Criminal Original Petitions filed under Section 482

Cr.P.C. praying to quash the impugned summons dated 30.11.2022 in
Na.Ka.No.3020/2021/A1 and Na.Ka.No.1893/2021/A1 respectively issued by
the 1st respondent.



Crl.O.P.No.32081 & 32085 of 2022

In both Crl.O.Ps

For Petitioners : Mr. N.Manoharan
for Mr.P.Krishnan

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

COMMON ORDER

These Criminal Original Petitions have been filed to quash the impugned summons dated 30.11.2022, in Na.Ka.No.3020/2021/A1 and Na.Ka.No.1893/2021/A1 respectively, issued by the first respondent.

2.The learned counsel for the petitioners challenged the summons dated 30.11.2022, issued in Na.Ka.No.3020/2021/A1 and Na.Ka.No.1893/2021/A1 respectively, on the following two grounds.

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

(b) The show cause notices 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) submitted



that it may be true that the petitioners are not habitual offenders, but they are

accused in Crime No.350 of 2018 registered for the offence of Girl missing.

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 petitioners can be asked to furnish security for their good behaviour as per Section 110 (g) Cr.P.C.

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. It is not in dispute that there is only one case pending against the petitioners and therefore, they cannot be categorized as habitual offenders.



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To fit the petitioners under Section 110 (g), it must be established that the petitioners are so desperate and dangerous that they 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 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 summons shows that the petitioners had involved in many criminal activities. History sheet list is maintained against the petitioners and therefore, Sub Inspector of Pothatturpet Police Station had given a requisition for obtaining good conduct certificate from the petitioners. On the basis of that requisition, these summons were issued. These summons, which are 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



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is of the considered view that these summons do not exemplify the petitioners as a habitual offender and they are so desperate and dangerous that they 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 summons dated 30.11.2022, in Na.Ka.No.3020/2021/A1 and Na.Ka.No.1893/2021/A1 respectively, issued by the first respondent are contrary to law and are liable to be quashed.

8.Accordingly, these Criminal Original Petitions are allowed and the impugned summons dated 30.11.2022, in Na.Ka.No.3020/2021/A1 and Na.Ka.No.1893/2021/A1 respectively, issued by the first respondent are quashed. Consequently, connected miscellaneous petitions are also closed.

02.01.2023

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



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To:

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- 1.The Revenue Divisional Officer,
Thirutani, Tiruvallur District.
- 2.The State rep by
The Sub Inspector of Police,
D-6, Pothatturpet Police Station,
Thirutani Sub Division,
Thiruvallur District.
- 3.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
sli

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