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Crl.O.P.(MD)No.2153 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2023

Delivered on : 13.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.2153 of 2023

and

Crl.M.P.(MD)Nos.1852 and 1854 of 2023

Gunasekaran

... Petitioner

vs.

1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Uthamapalayam,
Theni District.

2.The Inspector of Police,
Gudalure South Station,
Theni District.

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to the impugned order passed in M.C.No.07/2023/A-2, dated 19.01.2023 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.Henri Tiphagne

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

The above Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the order passed in M.C.No.07/2023/A-2, on the file of the first respondent, dated 19.01.2023 and quash the same.

2. The case of the petitioner is that the first respondent has issued summon under Section 113 Cr.P.C. directing him to appear for an enquiry on 27.01.2023, without following the procedure contemplated under Section 111 Cr.P.C., for initiating proceedings under Section 110 Cr.P.C.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

4. The learned counsel appearing for the petitioner would contend that the first respondent has directly issued show cause notice under Section 113 Cr.P.C., without following the procedure contemplated under Section 111 Cr.P.C., that the first respondent has to issue show cause notice under Section 111 Cr.P.C. and only thereafter, he can issue summons under Section 113 Cr.P.C., that the second respondent, without



mentioning the cases involved by the petitioner, sent a report to the first respondent to initiate proceedings under Section 110 Cr.P.C., as if, the petitioner had committed breach of peace and disturbing public tranquility in the jurisdiction of the second respondent and that the first respondent, without recording his satisfaction, accepted the report and passed the impugned order.

5. The learned Additional Public Prosecutor appearing for the respondents would submit that the impugned summon has been issued only directing the petitioner to appear for an enquiry and even though, the summons has been issued under Section 113 Cr.P.C., it is only the notice issued under Section 111 Cr.P.C.

6. I have considered the rival submissions and perused the materials available on record.

7. It is necessary to refer the provisions of Sections 111 and 113 Cr.P.C., which reads as follows:-

“111 Cr.P.C. - Order to be made. When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall 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.

113 Cr.P.C. - Summons or warrant in case of person not so present. If such person is not present in Court, the Magistrate shall issue in a summons requiring him to appear; or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court: Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.”

8. It is pertinent to note that the impugned summon has been issued by the first respondent under Section 113 Cr.P.C. for initiating the proceedings under Section 110 Cr.P.C.

9. As rightly contended by the learned counsel appearing for the petitioner, the Executive Magistrate before ever taking any action under Section 110 Cr.P.C. should issue show cause notice under Section 111



Cr.P.C. setting forth the substance of the information received by him and the amount of bond to be executed and also the duration of the bond and that after issuing show cause notice under Section 111 Cr.P.C., if that person fails to appear for enquiry then he can issue summons under Section 113 Cr.P.C.

10. In the case on hand, as already pointed out, the first respondent, without issuing any show cause notice under Section 111 Cr.P.C., has directly issued the summon under Section 113 Cr.P.C.

11. It is not the case of the respondents that orders has already been passed under Section 111 Cr.P.C.

12. Considering the above, this Court has no hesitation to hold that the impugned summon issued under Section 113 Cr.P.C. directly without following the procedure under Section 111 Cr.P.C. is not good in law and the same is liable to be quashed.

13. In the result, this Criminal Original Petition stands allowed and the impugned order, dated 19.01.2023 issued by the first respondent in M.C.No.07/2023/A2 is hereby quashed. However, the first respondent is at liberty to issue fresh notice to the petitioner under Section 111 Cr.P.C.



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and proceed further, in accordance with law. Consequently, connected

Miscellaneous Petitions are closed.

13.02.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
das

To

- 1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Uthamapalayam,
Theni District.
- 2.The Inspector of Police,
Gudalure South Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

das

Pre-delivery order made in
Crl.O.P.(MD)No.2153 of 2023
and
Crl.M.P.(MD)Nos.1852 and 1854 of 2023

Dated :13.02.2023