



WEB COPY



Cr1.O.P. (MD)No.4102 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.ILANGOVAN

Cr1.O.P. (MD)No.4102 of 2023

and

Cr1.M.P(MD) .Nos.3650 and 3651 of 2023

Aravind : Petitioner
Vs.

1.The Executive Magistrate-Cum-
Deputy Commissioner of Police,
West,
Tirunelveli City,
Tirunelveli.

2.The Inspector of Police,
Thatchanallur Police Station,
Tirunelveli. : Respondents

PRAYER:Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records of the proceedings initiated by the 1st respondent in EMC(W)No.07 of 2023, dated 10.01.2023 and quash the said proceedings as against the petitioner.

For Petitioner : Mr.P.Samuel Gunasingh
For Respondents : Mr.S.Manikandan
Government Advocate
(Criminal side)



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O R D E R

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Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondents.

2.The first respondent had issued the impugned summon calling upon the petitioner to appear before him for the purpose of conducting an enquiry under Section 110 Cr.P.C, on 24.01.2023 at about 11.00 pm, to show cause as to why a bond for Rs.50,000/- for keeping peace for a period of one year, should not be taken from him. To quash the said summons, this Criminal Original Petition has been filed.

3.As rightly pointed out by the learned counsel appearing for the petitioner, the power under Section 110 Cr.P.C can be invoked by the Executive Magistrate only in the case of habitual offender or if the person concerned is so desperate and dangerous as to render his being at large hazardous to the community.

4.The expression "**habitual offender**" has been defined in Section 2(4) of the Tamil Nadu Restriction of Habitual Offenders Act, 1948 in the following terms:-



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"2(4) '**habitual offender**' means a person who before or after the commencement of this Act has been sentenced to a substantive term of imprisonment. Such sentence not having been set aside in appeal or revision. On not less than three occasions for any one or more of the schedule offences each of the subsequent sentences having been passed in respect of an offence committed after the passing of the sentence on the previous occasion."

5. Whether the first respondent herein namely the Deputy Commissioner of Police, got power to initiate proceedings under Chapter 8 of Criminal Procedure Code was resolved by the Division Bench of this court in the case of **P.Sathish @ Sathish Kumar (Crl.RC No.137 of 2018 batch etc., dated 13/03/2023,** by confirming the view that was taken by the single Judge of this court in the case of **Devi Vs. Executive Magistrate (2020-6-CTC-157)** and stated that the DCP does not have any power or jurisdiction to initiate action and it must be taken only by the Revenue Officer. Now, the matter has been resolved and nothing more is needed to be discussed.



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6. Even though, the learned counsel appearing for the petitioner would submit that except, the solitary case in Crime No.289 of 2022, he has not involved in any other case. So the Habitual offenders Act does not attract. Now we need not go into that aspect.

7. This petition is liable to be allowed in view of the discussion in para 5.

8. In the result, this criminal original petition is **allowed**. The proceedings of the 1st respondent in EMC(W)No.7 of 2023, dated 10/01/2023 is hereby quashed. But however, let the competent authority may initiate fresh proceedings, if still necessity exists by following due process of law. Consequently, connected miscellaneous petitions are closed.

07.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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Tirunelveli City,
Tirunelveli.
- 2.The Inspector of Police,
Thatchanallur Police Station,
Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

tta/er

Order made in
Cr1.O.P. (MD) No.4102 of 2023

Dated : 07.03.2023