



Crl.O.P.(MD).No.14048 of 2022 and batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.03.2023

Delivered On: 25.07.2023

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD).Nos.14048, 15511, 16955, 18586 and 18587 of 2022
and Crl.M.P.(MD).Nos.9025,10186, 10187, 11380, 12486, 12489,
12487 and 12491 of 2022

Cause Title in Crl.O.P.(MD).No.14048 of 2022

E.Narayanan @ Karthick ... Petitioner/Respondent

Vs.

1.The Executive Magistrate Cum
The Deputy Commissioner of Police – West,
Tirunelveli Town.

2.The Sub-Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli Town. ... Respondents/Complainants

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the proceedings of the 1st respondent in EMC(W) No.69 of 2022, dated 12.07.2022 and to quash the same in respect of the petitioner alone.



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For Petitioner : Mr.G.Pragalathan

For Respondents : Mr.R.Suresh Kumar for R1 & R2
Government Advocate (Crl. Side)

COMMON ORDER

Let us first go into the facts of the individual cases:

Crl.O.P.(MD).No.14048 of 2022:

The Deputy Commissioner of Police, Tirunelveli West, issued a summon against the petitioner stating that he received information from the Sub Inspector of Police, Tirunelveli Town, that on 07.07.2022, at about 06.00 p.m., when he was on routine patrol duty, this petitioner was found standing near Bagavathsingh Street, in a suspicious manner. On enquiry he did not reveal the reason for his presence in that place. Further enquiry reveals that he was already involved in Crime Nos.74 of 2022 & 111 of 2022. Apprehending breach of peace by his continuous criminal activities, he was called upon to explain as to why he should not be directed to execute a bond for Rs.50,000/- for keeping peace for the period of one year, by way of this summon.

Crl.O.P.(MD).No.15511 of 2022:

The Deputy Commissioner of Police, Tirunelveli East, initiated an



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action and issued summon against the petitioner stating that on 05.08.2022 at about 07.00 p.m., when the Inspector of Police, Melapalayam Police Station, was on routine patrol duty, he found this petitioner standing near Veinthankulam area in a suspicious manner. On enquiry, he did not reveal proper reasons for his presence in that place. On further enquiry, it was found that he was involved in Crime No.305 of 2022, which was registered for the offence punishable under Section 24(1) COTPA Act. Apprehending breach of peace by his continuous criminal activities, he was called upon to explain as to why he should not be directed to execute bond for Rs.50,000/- for keeping peace for the period of one year by way of this petition.

Crl.O.P.(MD).No.16955 of 2022:

The Deputy Commissioner of Police, Tirunelveli East, had initiated an action and issued summon against the petitioner stating that on 02.09.2022 at about 03.30 p.m., when the Inspector of Police, Melapalayam Police Station, was on routine patrol duty, he found this petitioner standing near Kurichi area in a suspicious manner. On enquiry, he did not reveal proper reasons for his presence in that place. On



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further enquiry, it was found that the petitioner was involved in Crime No.403 of 2017, which was registered for the offences punishable under Section 147, 148, 341, 294(b), 302, 506(ii) IPC PT. So History sheet in H.S.No.165/2003 was also opened in respect of the petitioner. Therefore, apprehending breach of peace by his continuous criminal activities, he was called upon to explain as to why he should not be directed to execute a bond for Rs.50,000/- for keeping peace for the period of one year by way of this petition.

Crl.O.P.(MD).No.18586 of 2022:

The Deputy Commissioner of Police, Tirunelveli East, had initiated an action and issued summon against the petitioner stating that on 30.09.2022 at about 10.30 a.m., when the Inspector of Police, Melapalayam Police Station, was on routine patrol duty, he found this petitioner standing near Melapalayam-Kurichi Junction, in a suspicious manner. On enquiry, he did not reveal proper reasons for his presence in that place. On further enquiry, it was found that the petitioner was involved in six criminal cases pending, filed by the above said Police Station. Therefore, apprehending breach of peace by his continuous



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criminal activities, he was called upon to explain as to why he should not be directed to execute a bond for Rs.50,000/- for keeping peace for the period of one year by way of this petition.

Crl.O.P.(MD).No.18587 of 2022:

The Deputy Commissioner of Police, Tirunelveli East, had initiated an action and issued summon against the petitioner stating that on 30.09.2022 at about 08.30 a.m., when the Inspector of Police, Melapalayam Police Station, was on routine patrol duty, he found this petitioner standing near Melapalayam Market Roundana area, in a suspicious manner. On enquiry, he did not reveal proper reasons for his presence in that place. On further enquiry, it was found that he was involved in 1)Crime No.35 of 2021 registered u/s. 294(b), 307, 506(ii) IPC and 147, 148, 294(b), 324, 506(ii) of IPC 2)Cr.No.344 of 2022 registered u/s 294(b), 323, 324, 506(ii) IPC, filed by the above said Police which is still pending. Therefore, apprehending breach of peace by his continuous criminal activities, he was called upon to explain as to why he should not be directed to execute a bond for Rs.50,000/- for keeping peace for the period of one year by way of this petition.



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2. Challenging the above said summons, these petitioners have come forward with these petitions.

3. Common question of law arises in all these matter is regarding to the power of Deputy Commissioner of Police to act as an Executive Magistrate to initiate actions which have preventive in nature as per Chapter VIII of the Criminal Procedure Code.

4. This position has been clarified and settled by confirming the view that was taken by Single Judge in the case of ***Devi Vs. Executive Magistrate cum Deputy Commissioner of Police and another*** in ***Crl.R.C.No.78 of 2020***. In the above said case, after elaborately considering the Division of powers or separation of powers between the Judicial and Executive Magistrate, it was held that the Government Order passed by the Government empowering the Deputy Commissioner of Police to initiate action was found to be illegal. The same view was confirmed by the Division Bench of this Court reported in the case of ***P.Sathish @ Sathish Kumar Vs. State represented by the Inspector of***



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Police, dated 13.03.2023.

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5. In view of the above said statement of law, the summons that was issued by the Deputy Commissioner of Police, is without jurisdiction. On the sole ground, all the petitions are liable to be allowed. However, liberty is granted to the competent authority to initiate action in proper manner by following due process of law, if still the breach of peace apprehended at the hands of these petitioners.

6. With the above said liberty, all the petitions are **allowed** and the summons issued by the Deputy Commissioner of Police, in all these petitions are hereby quashed. Consequently, connected miscellaneous petitions are closed.

25.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1.The Executive Magistrate Cum
The Deputy Commissioner of Police – West,
Tirunelveli Town.

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G.ILANGO VAN,J

TM

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

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