



Crl.O.P.(MD)No.12459 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.07.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.12459 of 2023

and

Crl.M.P.(MD) No.9745 of 2023

Kalidurai

... Petitioner

Vs.

1. The II Class Executive Magistrate-Cum-
The Tahsildar,
Kamuthi, Ramanathapuram District.

2. The State rep. by
The Inspector of Police,
Kamuthi Police Station,
Ramanathapuram District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records pertains to M.C.No.18 of 2023 dated 20.06.2023 on the file of the first respondent and quash the same.

For Petitioner : Mr.G.Vishnuram

For R1 & R2 : Mr.E.Antony Shaya Prabahar
Additional Public Prosecutor



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ORDER

This Criminal Original Petition is filed questioning the summons dated 20.06.2023 issued by the learned II Class Executive Magistrate-Cum-Tahsildar/first respondent asking the petitioner to execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with sureties under Section 111 of Code of Criminal Procedure.

2. The petitioner has challenged the said notice issued under Section 111 of Cr.P.C., on the ground that there are no criminal cases pending against him and that substance of imputation has not been clearly mentioned in the summons.

3. The summons issued to the petitioner under Section 111 of Cr.P.C. discloses that the Inspector of Police/second respondent has informed the Executive Magistrate/first respondent that there is a breach in law and order situation, thereby directed the petitioner to execute the bond.



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4. Learned Executive Magistrate/first respondent has to satisfy himself prior to ordering a notice that the petitioner is likely to commit breach of peace in his territorial jurisdiction. The basic requirements to invoke Section 111 of Cr.P.C. are missing in the notice as the details as to how the petitioner is likely to breach the peace has not been mentioned. The letter of Inspector of Police, Kamudi Police Station in reference No.1 is not enclosed to the notice.

5. Learned counsel for the petitioner has also relied upon the decision of this Court in CrI.O.P.No.23159 of 2022 dated 28.09.2022, the relevant paragraphs read as under:-

"6.The issue of summon under Section 111 Cr.P.C is judicial act, the object behind this summon is to enable the person to prepare for the defence. After the order is served, an enquiry is to be held under Section 116 Cr.P.C. After concluding enquiry, the Revenue Divisional Officer/(put the first respondent) shall pass final order. Unless the Revenue Divisional Officer/(put the first respondent) is placed with the mandatory requirements of the provisions of law under Section 111 Cr.P.C, they will have no jurisdiction to direct the person to proceed against to appear before him or to secure their presence for the purpose of enquiry. The Hon'ble Apex Court has issued guidelines in the cases of State of Haryana vs.



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Ch.BhajanLal (AIR 1992 SC 604), M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others (2021 SCC online 315) & PRATIBHA RANI Vs.SURAJ KUMAR & ANR (1985 Crl.L.J.817) that the matter has to be investigated to find out the truth.

7.In the instant case, the impugned summon dated 12.09.2022 contain only vague information about the complaint/information given by the Sub Inspector of Police and the substance of information received is incomplete. Thus, the summon without substance of information nullify the proceeding. The failure to comply with the mandatory requirements of setting forth, the substance of information under Section 111 Cr.P.C vitiate the notice/order and consequently, the proceeding would be quashed."

The facts of the aforesaid case are similar to that of the facts of the present case on hand.

6. Learned Additional Public Prosecutor has fairly conceded that there is no proper record placed before the learned Executive Magistrate/first respondent by the Inspector of Police enabling the Executive Magistrate to issue the summons under Section 111 of Cr.P.C.



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7. In view of the above, the summons dated 20.06.2023 issued by learned II Class Executive Magistrate-Cum-Tahsildar/first respondent are without any basis and therefore, required to be quashed. Accordingly, this Criminal Original Petition is allowed and the summons issued by the learned II Class Executive Magistrate-Cum-Tahsildar/first respondent dated 20.06.2023 is quashed. Consequently, connected criminal miscellaneous petition is closed.

18.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN

To

1. The II Class Executive Magistrate-Cum-The Tahsildar,
Kamuthi, Ramanathapuram District.
2. The State rep. by
The Inspector of Police,
Kamuthi Police Station,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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Dated: 18.07.2023