



Crl.O.P.(MD)No.12261 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.07.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.12261 of 2023

and

Crl.M.P.(MD) Nos.9619 and 9621 of 2023

Ganesan

... Petitioner

Vs.

1. The Second Class Executive Magistrate/
Tahsildar,
Aruppukottai Taluk,
Virudhunagar District.

2. The State rep. by
The Sub Inspector of Police,
M.Reddiyapatti Police Station,
Virudhunagar District.
L.I.R.No.12 of 2023

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records relating to the proceedings of L.I.R.No.12/2023 on the file of the first respondent/Second Class Executive Magistrate cum Tahsildar, Aruppukottai Taluk, Virudhunagar District and quash the same as against the petitioner herein.



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For Petitioner : Mr.G.Mariappan

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

ORDER

This Criminal Original Petition is filed challenging the notice issued to him under Section 111 of the Code of Criminal Procedure, wherein, the petitioner was asked to execute a bond for a sum of Rs.25,000/- along with two sureties alleging that he is likely to commit a breach of peace.

2. The first respondent/ Second Class Executive Magistrate-cum-Tahsildar has issued summons to the petitioner in L.I.R.No.12 of 2023 directing the petitioner to appear before him at 11:00 a.m. on 06.07.2023 along with two sureties for executing the bond for a sum of Rs.25,000/- on the ground that he has received information that the petitioner is likely to commit a breach of peace.



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3. It is submitted by learned counsel for the petitioner that the first respondent/Executive Magistrate has not mentioned the substance of information that he has received, on the basis of which he has concluded that the petitioner is likely to commit breach of peace and thereby issued summons under Section 111 of Cr.P.C.

4. Section 111 of Cr.P.C. reads as under:-

"111. 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."

5. On going through the above provisions, it is clear that the issuance of summons under Section 111 of Cr.P.C. depends upon the proceedings either under Section 107 or Section 108 or Section 109 and Section 110 of the Code of Criminal Procedure. Section 107 of Cr.P.C. deals with providing security of keeping peace when the Executive



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Magistrate gets an information that any person likely to commit any breach peace thereby. Under section 108 of Cr.P.C., proceedings can be initiated by the Executive Magistrate, in case, if he received information that within his jurisdiction, if any person intentionally disseminates or attempts to disseminate or abets to disseminate, which ultimately effects a breach of peace. Similarly, Section 109 of Cr.P.C. speaks that if the Executive Magistrate gets information that any person is likely to commit cognizable offence. Finally, Section 110 of Cr.P.C. speaks, in case, within the jurisdiction, if the person commit various offences as enumerated from Clause (a) to Clause (g), then the proceedings can be initiated.

6. The summons issued to the petitioner under Section 111 of Cr.P.C., to the effect that the petitioner is likely to commit a breach of peace. That means, the summons issued to the petitioner are under Section 107 read with Section 111 of Cr.P.C. Therefore, the Executive Magistrate is expected to satisfy himself the requirements of Section 107 of Cr.P.C., which requires that the Executive Magistrate to receive information that a person is likely to commit a breach of peace or disturb



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the public tranquillity or any such thing as mentioned in Section 107 of Cr.P.C.

7. On a careful reading of the summons issued by the first respondent/Executive Magistrate in favour of the petitioner, it is mentioned that the petitioner is likely to commit a breach of public peace. The Executive Magistrate did not mention the substance of information. Normally, the Inspector of Police would approach the Executive Magistrate with the request that the persons within the jurisdiction of the Executive Magistrate, likely to commit breach of peace. But the learned Executive Magistrate did not refer to any of the letter of police department communicated to him. More importantly, he has mentioned the details "reliable information" which he has received. When the Executive Magistrate mentions that he has received reliable information, the substance of such information required to be mentioned prior to issuance of summons. The Executive Magistrate cannot act arbitrarily without giving any details. Either of Section 107 or Section 111 of Cr.P.C. authorize the Executive Magistrate if he gets "reliable information" that such summons can be issued further.



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8. It is settled legal position that the summons issued by the Executive Magistrate can be subjected to judicial review of this Court. The Executive Magistrate is expected to mention about the information that he has received. Merely because the Sub Inspector of Police requested the Executive Magistrate, he cannot issue summons without applying the mind. He has to consider the information and shall come to just conclusion that issuance of summons is necessary on account of the fact that the information was received by him will given indication that the petitioner may likely to commit a breach of peace. As already mentioned above, the Executive Magistrate failed to mention not only the source of information but also the substance of imputations or reasons for coming to conclusion that summons under Section 111 of Cr.P.C. are required to be given to the petitioner.

9. In view of the above, the proceedings in L.I.R.No.12 of 2023, issued by learned Second Class Executive Magistrate-Cum-Tahsildar/first respondent are without any basis and therefore, required to be quashed. Accordingly, this Criminal Original Petition is allowed



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and the summons issued by the learned Second Class Executive Magistrate-Cum-Tahsildar/first respondent is quashed. Consequently, connected criminal miscellaneous petitions are closed.

21.07.2023

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

To

1. The Second Class Executive Magistrate/
Tahsildar,
Aruppukottai Taluk,
Virudhunagar District.
2. The State rep. by
The Sub Inspector of Police,
M.Reddiyapatti Police Station,
Virudhunagar 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: 21.07.2023