



W.P.(MD)No.17834 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2023

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THE HON'BLE MR.JUSTICE P.DHANABAL

W.P.(MD)No.17834 of 2020

and

W.M.P.(MD)Nos.14864 & 14867 of 2020

Kasipandaram @ Kasirajan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary,
Home Department,
Fort St.George,
Chennai.

2.The Deputy Superintendent of Police,
Musiri Sub Division, Trichy District.

3.The Inspector of Police,
Thathaiyangarpet Police Station,
Trichy District.

4.Omprakash

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order made by the second respondent dated 21.08.2020 and quash the same as illegal.



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For Petitioner : Mr.M.Mahaboob Athiff
For R1 to R3 : Mr.R.M.Anbunithi,
Additional Public Prosecutor
For R4 : Mr.M.Karthikeya Venkitachalapathy

ORDER

This Writ Petition has been filed to quash the impugned order made by the second respondent dated 21.08.2020.

2.The learned counsel appearing for the petitioner would contend that the impugned order was passed by the second respondent by invoking power under Section 107 Cr.P.C. But the second respondent, being Deputy Superintendent of Police, cannot invoke power under Section 107 Cr.P.C. Under Section 107 Cr.P.C., the Executive Magistrate alone can exercise power and thereby, the proceedings initiated by the second respondent under Section 107 Cr.P.C., is illegal and it is liable to be quashed.



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3.The learned Additional Public Prosecutor appearing for the official respondents would contend that the impugned order was passed for a particular period and the said period was over and thereby, this petition become infructuous and the same is liable to be dismissed.

4.Heard both sides and perused the materials available in the records.

5.On perusal of records shows that the second respondent police has invoked power under Section 107 Cr.P.C. In this context, it is relevant to extract the Section 107 Cr.P.C:-

107. Security for keeping the peace in other cases

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit



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(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction

It is apparent that the Executive Magistrate alone can exercise power under Section 107 Cr.P.C. That apart, the learned counsel appearing for the petitioner relied upon the judgment of this Court in a case of ***Dvei Vs. Executive Magistrate*** reported in ***2020 6 CTC 157*** wherein this Court held that the Deputy Superintendent of Police cannot invoke powers of the Executive Magistrate. Further, the learned counsel for the petitioner relied upon the decision of this Court made in CrI.R.C.(MD)No.137 of 2018 dated 13.03.2023.

6.On careful reading of the above said judgments shows that the Deputy Superintendent of Police cannot invoke power under Section 107 Cr.P.C. Hence, the impugned order passed by the second respondent is liable to be quashed and accordingly, the proceeding initiated by the second respondent under Section 107 Cr.P.C., is hereby set aside and this



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writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

04.08.2023

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

- 1.The Home Department,
Fort St.George,
Chennai.
- 2.The Deputy Superintendent of Police,
Musiri Sub Division, Trichy District.
- 3.The Inspector of Police,
Thathaiyangarpet Police Station,
Trichy District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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