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Crl.O.P.(MD)No.12364 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	17.07.2023
Delivered on	26.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.12364 of 2023
and Crl.M.P.(MD) Nos.9704 & 9705 of 2023

K.Puthiyamuthu

... Petitioner/Accused

Vs.

1. The Executive Magistrate Cum
District Revenue Officer,
Tirunelveli.

2.The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli City.

... Respondents/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the show cause notice issued by the first respondent in A5/MC No.225/2023 (107) dated 15.05.2023 and quash the same as illegal.

For Petitioner : Mr.K.Anand



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Crl.O.P.(MD)No.12364 of 2023

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed questioning the summons issued by the first respondent / the Executive Magistrate Cum District Revenue Officer, Tirunelveli on the request of the second respondent/Inspector of Police.

2. The facts in brief as could be gathered from the record would go to show that the first respondent has issued summons dated 15.05.2023 in A5/MC No.225/2023 (107) which was served on the petitioner on 20.05.2023 directing the petitioner to appear before the first respondent on 23.05.2023 to show cause as to why the petitioner cannot asked to executed the bond of Rs.50,000/- on the basis of LIR No.15/18 filed by the second respondent Police.

3. Heard both sides and perused the record.

4. As per Section 107 of Cr.P.C. if the Exeuctive Magistrate



Crl.O.P.(MD)No.12364 of 2023

receives information that a person likely to commit breach of peace and disturb the public tranquility can issue summons under Section 107 of Cr.P.C. The first respondent/Executive Magistrate has not enclosed the copy of LIR No.15/18 submitted by the second respondent/Inspector of Police in favour of the first respondent.

5. 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. When the Executive Magistrate mentions that he has received reliable information, the substance of such information required to be recorded prior to issuance of summons.



Crl.O.P.(MD)No.12364 of 2023

6. Merely because the 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 are necessary basing on the information received by him. 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 107 of Cr.P.C. are required to be given to the petitioner. In order to issue summons the first respondent/Executive Magistrate is expected to go through the information received by him from the second respondent vide LIR No. 15/18 and he is expected take cognizance whether the information furnished to him by the police prima facie makes out a case against the petitioner and whether the first respondent has satisfied that the petitioner is likely to breach the peace and disturb the public tranquillity in the society. Only then, the first respondent is expected to issue summons under Section 107 of Cr.P.C.

7. However, in the case on hand, except mentioning that the



Crl.O.P.(MD)No.12364 of 2023

petitioner is likely to breach peace and tranquillity, the notice did not add anything as to how he has come to the said conclusion.

8. In view of the above, the proceedings in A5/MC No.225/2023 (107) dated 15.05.2023 issued by learned 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 Executive Magistrate-Cum-Tahsildar/first respondent is quashed. Consequently, connected criminal miscellaneous petitions are closed.

26.09.2023

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

PKN/mvs.



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Crl.O.P.(MD)No.12364 of 2023

DR.D.NAGARJUN,J

PKN/mvs.

To

1. The Executive Magistrate Cum
District Revenue Officer,
Tirunelveli.
2. The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
Crl.O.P.(MD)No.12364 of 2023

Dated: 26.09.2023