



CrI.O.P.(MD) No.13066 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD) No.13066 of 2023

and

CrI.M.P.(MD).No.10235 of 2023

Maniraja

... Petitioner

Vs.

1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Devakottai.

2.The Inspector of Police,
Nerkuppai Police Station,
Sivagangai District.

...Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for records culminating in M.C.No.187 of 2022/A1, dated 03.07.2023, on the file of the respondent and quash the entire proceedings.

For Petitioner : Mr.S.Venkatasubramaniyan

For R1 & R-2 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

This Criminal Original Petition is filed under Section 482 of Cr.P.C. Seeking to quash summons issued by the learned Sub Divisional Magistrate cum Revenue Divisional Officer, Devakottai, dated 03.07.2023 in M.C.No.187 of 2022/A1, dated 03.07.2023 directing the petitioner to appear before him on 10.07.2023 at about 11.00 A.M.

2. According to prosecution, the second respondent / the Inspector of Police, Nerkuppai Police Station, Sivagangai District, has submitted a report to the learned Sub Divisional Magistrate cum Revenue Divisional Officer, Devakottai / first respondent herein alleging that the petitioner would cause public nuisance, as various crimes have been registered against him and thereby issued impugned summons dated 3/7/2023 asking the petitioner to appear before the first respondent and execute a bond.

3. It is submitted that the petitioner is not served with the copy of the report (substance of information) and the respondent No.1 has mechanically issued the summons to the petitioner.



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4. Learned Additional Public Prosecutor has submitted on the other hand that the impugned notice issued by the first respondent consists of substance of information and does not suffer from any illegality and the copy of the proceedings of respondent No.2 / the Inspector of Police submitted before the first respondent will be furnished to the petitioner on his request.

5. Heard both sides and perused the records.

6. The contention raised by the petitioner is that substance of information is missing in the impugned notice, dated 03.07.2023, issued by the first respondent / Revenue Divisional Officer. On going through the copy of the summons issued, it is mentioned that a report under Section 110 of Cr.P.C. has been filed by the Inspector of Police that the petitioner has committed offence in Crime No.15 of 2020, Crime No.93 of 2021, Crime No.3 of 2022, Crime No.24 of 2022, Crime No.16 of 2022 and finally, Crime No.46 of 2022. It is also submitted in the report filed by the Inspector of Police that the petitioner is carrying weapons in the public place and acting in such a way so as to cause panic among



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the people and causing destruction of the public property and causing fear to the public to run away on seeking him. Thereby, summons have been issued.

7. On going through the records, this Court is not satisfied with the contentions of the learned counsel for the petitioner that there is no substance of information in the impugned summons. On going through the impugned order, the learned Sub Divisional Magistrate has mentioned specifically that he has examined the documents submitted by the Inspector of Police, Nerkuppai Police Station and the respondent Police have decided that there is sufficient evidence to proceed against the petitioner under Section 110 of Cr.P.C.

8. The Revenue Divisional Officer has narrated the substances of information received by him through the Inspector of Police and in the second limb of the notice, the first respondent / the Sub Divisional Magistrate has also stated that having considered the report of the Police, he has confessed that there is a material against the petitioner to issue summons. That means, the respondent No.1 / Sub Divisional Magistrate has acted diligently and having gone through the record has consciously concluded that there is a material against the petitioner



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to proceed and thereby, notice has been ordered to the petitioner. However, basing on the grounds raised by the petitioner, it cannot be stated that the impugned summons issued is required to be struck off.

9. However, another important aspect, the respondent Police have stated before the R1 / Executive Magistrate is that the petitioner is involved in six crimes and also mentioned the details of the cases involved.

10. Section 110 of Cr.P.C. reads as under:

When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment of disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the Commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45



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of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the Commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely:—

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(c) the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952);

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962); or

(ii) any offence punishable under any other law providing for the prevention of



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hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

11. On considering the above, it is clear that merely because the petitioner is involved in number of cases, it does not give any ground to issue summons under Section 110 of Cr.P.C. The respondent No.1 has to mention that he has been a habitual offender. In order to mention as a habitual offender, the pendency of six cases is not a ground. In all the cases, charge sheets must have been filed and earlier, the case against the petitioner should have been proved against the accused. There is no record that the petitioner is a habitual offender.

12. The Hon'ble Supreme Court of India in the case of ***Gopalanachari v. State of Kerala***, reported in ***1980 (Supp) SCC 649***. The relevant paragraphs read



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"The constitutional survival of Section 110 certainly depends on its obedience to Article 21, as this Court has expounded. Words of wide import, vague amplitude and far too generalised to be safe in the hands of the Police cannot be constitutionalised in the context of Article 21 unless read down to be as a fair and reasonable legislation with reverence for human rights. A glance at Section 110 shows that only a narrow signification can be attached to the words in clauses (a) to (g), "by habit a robber....", "by habit a receiver of stolen property....", "habitually protects or harbours thief....", "habitually commits or attempts to commit or abets the commission of ", "is so desperate and dangerous as to render his being at large without security hazardous to the community". These expressions, when they become part of the preventive chapter with potential for deprivation of a man's personal freedom upto a period of three years, must be scrutinised by the court closely and anxiously. The poor are picked up or brought up, habitual witnesses swear away their freedom and courts ritualistically commit them to prison and Article 21 is for them a freedom under total eclipse in practice. Courts are guardians of human rights. The common



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man looks upon the trial court as the protector. The poor and the illiterate, who have hardly the capability to defend themselves, are nevertheless not 'non-persons', the trial judges must remember, This Court in Hoskot's case has laid down the law that a person in prison shall be given legal aid at the expense of the State by the court assigning counsel. In cases under Section 110 of the Code, the exercise is often an idle ritual deprived of reality although a man's liberty is at stake. We direct the trial magistrates to discharge their duties, when trying cases under Section 110 of the Code, with great responsibility and whenever the counter-petitioner is a prisoner give him the facility of being defended by counsel now that Article 21 has been reinforced by Article 39A. Otherwise the order to bind over will be bad and void. We have not the slightest doubt that expressions like "by habit", "habitual", "desperate", "dangerous", "hazardous" cannot be flung in the face of a man with laxity of semantics. The Court must insist on specificity of facts and be satisfied that one swallow does not make a summer and a consistent course of conduct convincing enough to draw the rigorous inference - that by confirmed habit, which is second nature, the counter-petitioner . is sure to commit the offences mentioned if he is not kept



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captive. Preventive sections privative of freedom, if incautiously proved by indolent judicial processes, may do deeper injury. They will have the effect of detention of one who has not been held guilty of a crime and carry with it the judicial imprimatur, to boot. To call a man dangerous is itself dangerous; to call a man desperate is to affix a desperate adjective to stigmatise a person as hazardous to the community is itself a judicial hazard unless compulsive testimony carrying credence is abundantly available. A sociologist may pardonably take the view that it is the poor man, the man without political clout the person without economic stamina, who in practice gets caught in . the coils of Section 110 of the Code, although, we as court, cannot subscribe to any such proposition on mere assertion without copious substantiation. Even so, the court cannot be unmindful of social realities and be careful to require strict proof when personal liberty may possibly be the casualty. After all, the judicial process must not fail functionally as the protector of personal liberty."

13. In view of the above, the summons issued by the first respondent in M.C.No.187 of 2022/A1, dated 03.07.2023 against the petitioner is hereby



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quashed. Accordingly, this petition is allowed. Consequently, the connected miscellaneous petition is closed.

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

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tsg/mvs.



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DR.D.NAGARJUN. J.

tsg/mvs.

To

- 1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Devakottai.
- 2.The Inspector of Police,
Nerkuppai Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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