



*Crl.O.P.(MD)No.13480 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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| Reserved on  | 27.07.2023 |
| Delivered on | 31.08.2023 |

CORAM

**THE HON'BLE DR.JUSTICE D.NAGARJUN**

**Crl.O.P.(MD)Nos.13480 ,13472, 13466, 13461, 13456, 13453, 13451, 13447, 13446 , 13444, 13426, 13422 and 13417 of 2023**

**and**

**Crl.M.P.(MD) Nos.10511 & 10512 , 10517 & 10519, 10505 & 10506, 10500 & 10502, 10494 & 10497, 10490 & 10491, 10487 & 10488, 10484 & 10485, 10479 & 10482, 10477 & 10478, 10470 & 10472, 10467 & 10468, 10465 & 10466 of 2023**

**Crl.O.P.(MD)Nos.13480 of 2023**

Selvaraj

... Petitioner

V.

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

2. The Inspector of Police,  
Kariapatti Police Station,  
Virudhunagar District.

... Respondents

**PRAYER :** Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records relating to the impugned



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notice dated 18.04.2023 in L.I.R.No.06 of 2023 issued by the first respondent and quash the same as illegal.

For Petitioner : Mr.I.Suthakaran

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

### **COMMON ORDER**

These Criminal Original Petitions are filed challenging the summons dated 18.04.2023 issued to the petitioner under Section 111 of the Code of Criminal Procedure, alleging that the summons are vague and do not contain substantive satisfaction of the first respondent / Second Class Executive Magistrate-cum-Revenue Tahsildar thereby sought for quashment of the same.

2. The second respondent/Inspector of Police, Kariapatti Police Station, has submitted a report to the first respondent / Second Class Executive Magistrate-cum- Revenue Tahsildar in L.I.R.No.06 of 2023 dated 18.04.2023 to initiate proceedings against the petitioner alleging that the petitioner has been acting in breach of public tranquillity



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affecting the law and order within the jurisdiction of the first respondent/Executive Magistrate. The first respondent/Executive Magistrate issued impugned summons dated 18.04.2023 under Section 111 of Cr.P.C., in favour of petitioner asking him as to why action shall not be initiated against him under Section 107 of Cr.P.C.

3. Heard both sides and perused the record.

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 provision, it is clear that the summons under Section 111 of Cr.P.C. can be issued while acting under Section 107 or Section 108 or Section 109 and Section 110 of Cr.P.C. As



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per Sections 107 to 110 of Cr.P.C., the Executive Magistrate has to make:-

- (i) an order in writing or mentioning the substance of information received;
- (ii) the amount of the bond to be executed;
- (iii) the term for which it is to be in force;
- (iv) number of sureties and;
- (v) class of sureties and other particular.

6. In the case on hand, the first respondent/Executive Magistrate issued summons in L.I.R.No.06 of 2023 dated 18.04.2023 without mentioning substance of information. It is not clear from the summons what information learned Executive Magistrate has received information from the second respondent/police to initiate action under Section 107 of Cr.P.C. Issuing summons by the Executive Magistrate under Section 111 of Cr.P.C. is not an empty formality. He has to consider the information received and analyze independently, take a conscious decision as to whether there existing circumstances to proceed with issue of summons. Without recording his satisfaction in writing, issue of summons is bad



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contrary to the spirit of Section 111 of Cr.P.C.

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7. The Hon'ble Supreme Court of India in the case of ***Madhu Limaye v. Sub-Divisional Magistrate, Monghyr & Ors.***, reported in ***1971 AIR 2486*** has held as under:-

“... The gist of Section 107 may now be given. It enables certain- specified classes of Magistrates to make an order calling upon a person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such-

(1) (1961) 3 S.C.R. 423.

period not exceeding one year as the Magistrate thinks fit to fix. The condition of taking action is that the Magistrate is informed and he is of opinion that there is sufficient ground for proceeding that a 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. The Magistrate can proceed if the person is within his jurisdiction or the place of the apprehended breach of the peace or disturbance is within the local limits of his jurisdiction. The section goes on to empower even a Magistrate not empowered to take action, to record his reason for acting, and then to order the arrest of the person (if not already in custody or before the



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court) with a view to sending him before a Magistrate empowered to deal with the case, together with a copy of his reasons. The Magistrate before whom such a person is sent may in his discretion detain such person in custody pending further action by him.

The section is aimed at persons who cause a reasonable apprehension of conduct likely to lead to a breach of the peace or disturbance of the public tranquillity. This is an instance of preventive justice which the courts are intended to administer. This provision like the preceding one is in aid of orderly society and seeks to nip in the bud conduct subversive of the peace and public tranquillity. For this purpose Magistrates are invested with large judicial discretionary powers for the preservation of public peace and order. Therefore the justification for such provisions is claimed by the State to be in the function of the State which embraces not only the punishment of offenders 'but, as far as possible, the prevention of offences. Both the sections are counter-parts of the same policy, the first applying when by reason of the conviction of a person, his past conduct leads to an apprehension for the future and the second applying where the Magistrate, on information, is of the opinion that unless prevented from so acting, a person is likely to act to the detriment of the public peace and public tranquillity. The argument is that these sections (more particularly Section 107) are destructive of freedom of the individual guaranteed by Art. 19 (1) (a) (b) (c) and (d) and are not saved by the



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restrictions contemplated by clauses (2) to (5) of the article. It is also contended that there are no proper procedural safeguards in the sections that follow. Before we deal with these contention it is necessary 'to glance briefly at Sections 112-119 of Division B and Sections 120-126A ,of Division C. We have seen the provision of Section 107. That section says that action is to be taken 'in the- manner hereinafter - provided and this ,clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the, general public...

...It has to be noticed that, when proceedings are contemplated under section 107, the Magistrate takes action when he is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, only after forming an opinion that there is sufficient ground for proceeding against him. The Magistrate cannot start the proceedings merely because of the information received by him. Pursuant to the information, the Magistrate has to form his opinion that there is sufficient round for proceeding. This opinion can be formed on the basis of the information



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supplied to him if he finds that the information is given in sufficient detail and is reliable enough to justify his acting on its basis. In cases where the information given is not of such nature, it will be the duty of the Magistrate to hold further inquiry and satisfy himself that it is a fit case where action should be taken because sufficient grounds exist. There may be cases where the information may be received from the Police in which case the Magistrate may examine all the Police papers and satisfy himself that there do exist sufficient grounds for him to take, the proceedings as requested by the Police. There may be cases where the proceedings may be instituted at the instance of a private complainant who may be apprehending breach of the peace by the person complained against. In such cases, the Magistrate is bound either to hold some inquiry himself by examining witnesses on oath or to have an inquiry made through the Police, so that he may be able to, form a correct opinion as to the existence of sufficient grounds for proceeding. It is after the Magistrate has taken these steps that he can proceed to make the order under section 112. When, making that order, he has to record in it in writing the substance of the information received which necessarily means the part of the information which was the basis of his opinion that sufficient ground exist for initiating the proceedings. It is at this preliminary stage that the Magistrate is thus required to ensure that a prima facie case does exist for the purpose of...”



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8. In view of the above, the proceedings in L.I.R.No.06 of 2023 dated 18.04.2023, issued by the learned Second Class Executive Magistrate-Cum-Revenue Tahsildar/first respondent are not in compliance of Section 111 of Cr.P.C.

9. Accordingly, these Criminal Original Petitions are allowed and the impugned summons in L.I.R.No.06 of 2023 dated 18.04.2023 issued by the learned Second Class Executive Magistrate-Cum-Tahsildar/first respondent is quashed. Consequently, connected criminal miscellaneous petitions are closed.

**31.08.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
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**DR.D.NAGARJUN,J**

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Dated: 31.08.2023