



CrI.O.P.(MD) No.14997 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.08.2023

PRONOUNCED ON : 26.09.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD) No.14997 of 2023

and

CrI.M.P.(MD) No.11888 of 2023

Muthu

... Petitioner

Vs.

1.The Assistant Superintendent of Police,
Karaikudi Subdivision,
Sivagangai District.

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

3.VL.Ramanathan

..Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the impugned proceedings relating to the summons issued by the 1st respondent under Section 160 and 91 of the Code of Criminal Procedure signed on 02.08.2023 served on 10.08.2023 and quash the same.



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For Petitioner : Mr.VR.Shanmuganathan
for Mr.S.Sidharthan

For R1 and R2 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure questioning the summons issued by the respondent No.1/the Assistant Superintendent of Police under Section 160 and 91 of the Code of Criminal Procedure dated 02.08.2023.

2.It is submitted by the learned counsel that the petitioner is a practising advocate having 40 years of experience at Bar and is a counsel for a group of temples and a member of the legal advisory committee of the Trust, which administers the temple. It is submitted that the respondent No.1 police have issued summons dated 02.08.2023, which was served on the petitioner on 10.08.2023 asking him to produce the documents and directing him to appear on 16.08.2023 for enquiry basing on the complaint given by one Ramanathan. It is submitted that no case is registered against the petitioner and the summons issued



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by the respondent No.1 are not clear as to on what context, on a complaint given by the said Ramanathan, the summons have been issued and therefore, sought for quashment of summons.

3.The learned Additional Public Prosecutor submits that the complaint given by the said Ramanathan is registered as CSR.No.1218 of 2022 and during the course of enquiry, the respondent No.1 have issued summons on the petitioner. Section 160 Cr.P.C., runs as under:-

“160.Police officer' s power to require attendance of witnesses.

1) Any police officer, making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required: Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub- section (1) at any place other than his residence.”



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“91. Summons to produce document or other thing

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891(13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority ”

5. The provisions under Sections 91 and 160 Cr.P.C, will have to be initiated by the police during the course of investigation. Admittedly, no case is registered against the petitioner or against any person on the basis of a complaint given by



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the said Ramanathan. If at all any cognizable offence alleged to have been committed, the police should have registered a case on the basis of a complaint given by the said Ramanathan and during the course of investigation, after registration of the FIR, the police are at liberty to examine anybody and to summon anybody. However, instead of registering a case, summons have been issued to the petitioner without any jurisdiction.

6.Further, even otherwise on going through the summons, it is clear that there is no substance as to why the summons are being issued to the petitioner. The respondent No.1 police should have enclosed a copy of the complaint along with the summons, so that the petitioner could have come prepared and on what context the summons are issued. Merely saying that the presence of the petitioner is required in respect of a complaint given by the said Ramanathan does not make any sense as to the contents of the complaint filed by the said Ramanathan before the respondent police. Even otherwise, the complaint was allegedly filed by the said Ramanathan before the respondent No.2 police, whereas, the summons have been issued by the respondent No.1 police. This Court in a similar circumstances in Crl.O.P.No.10929 of 2019 has held as follows:-



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“7. It will be useful to rely upon the judgement of this Court in Prakash Transports Vs. Inspector of Police, referred supra, wherein this Court has held as follows.

“2. The learned counsel appearing for the petitioners submits that as no crime was registered by the respondent police, he has no jurisdiction to issue summons under Section 160 Cr.P.C., compelling the petitioners to appear before him and therefore, the summons has to be quashed. I find some substance in the said contention. The summons, which I have extracted above, shows that the officer did not even mention the crime number in the said summons. The learned Public Prosecutor also submits that no crime was registered by the respondent. If that be the case, it is not understandable as to how he should issue summons, since under Section 160 Cr.P.C., summons could be issued by any police officer making an investigation under that Chapter, which means that investigation is a sine qua non for issuing summons and the investigation can be conducted only in connection with the <http://www.judis.nic.in> 5 crime registered in terms of Section 154 Cr.P.C. Since there is no crime registered in terms of Section 154 Cr.P.C., no summons can be issued under Section 160 Cr.P.C., summoning a person to appear before the officer. As the summons summoning the petitioners, issued by the officer, is without jurisdiction, it is quashed. The petition is allowed.””

7.The facts of the case on hand are fairly similar to that of the facts of the case referred above. In view of the above, without going into further merits, the



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summons issued with jurisdiction are required to be quashed as the respondent police have not registered any case either against the petitioner or against anybody. Accordingly, this Criminal Original Petition is allowed and the impugned summons issued by the respondent No.1 under Sections 160 and 91 of the Code of Criminal Procedure signed on 02.08.2023 served on 10.08.2023 is hereby set aside. Consequently, connected Miscellaneous Petition is closed.

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

26.09.2023

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To

- 1.The Assistant Superintendent of Police,
Karaikudi Subdivision,
Sivagangai District.
- 2.The Inspector of Police,
Kunrakudi Police Station,
Sivagangai 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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order made in
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26.09.2023