



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.08.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD) No.15092 of 2023

and

Crl.M.P.(MD).No.11956 of 2023

Rajenthiran

... Petitioner

Vs.

1.The Second Class Executive Magistrate
cum Tahsildar,
Tahsildar Office, Rajasingamangalam,
Ramanathapuram District.

2.The Inspector of Police,
Rajasingamangalam Police Station,
Rajasingamangalam,
Ramanathapuram District.

3.The Inspector of Police,
Thiruppalaikkudi Police Station,
Thiruppalaikkudi,
Ramanathapuram District.

.. Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, calling for the records relating to the notice served on the petitioner on 10.08.2023 vice proceedings in A1-M.C/37/2023, dated 04.08.2023 and signature dated 04.08.2023 by the first respondent and quash the same as illegal.

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



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ORDER

This petition is filed under Section 482 of Cr.P.C. seeking quashment of notice issued by respondent No.1 / the learned Second Class Executive Magistrate cum Tahsildar, under Section 113 of Cr.P.C., vide proceedings No.A1-M.C/37/2023, dated 04.08.2023, asking the petitioner to appear on 14.08.2023 at about 11.00 A.M.

2. It is submitted by learned counsel for the petitioner that the impugned notice received by him through post is without any material and issued without following due process of law as respondent No.1 has not mentioned any substance of information received from the third respondent, thereby, the issuance of notice under Section 113 of Cr.P.C. is violative of procedure contemplated from Sections 107 to 112 of Cr.P.C.

3. Heard both sides and perused the records including the impugned notice.

4. The notice, dated 04.08.2023, has been issued vide proceedings No.A1-M.C/37/2023, signed by the first respondent / the



learned Second Class Executive Magistrate cum Tahsildar, asking the petitioner to appear on 14.08.2023 at 11.00 A.M., and the reference to this notice is stated to be proceedings under Section 110 (e) of Cr.P.C., dated 12.07.2023, the copy of which is not enclosed with details.

5. Section 111 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 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 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”



6. As per the above provision, whenever Executive Magistrate requires any person to show cause under Sections 107 to 110 of Cr.P.C., he has to make an order in writing, mentioning the substance of information received and the amount of the bond to be executed, the term for which it is to be in force, and other particulars. As per Section 112 of Cr.P.C. substance of such order has to be read over to the person in respect of whom the order is made, if he is present in the Court. Section 113 of Cr.P.C. deals with a situation whenever the person to whom the orders under Section 111 of Cr.P.C., required to be given is not available, the Executive Magistrate can issue either summons asking the said person to appear or if a such person is in the custody to issue warrant directing the Officer in whose custody the person to produce him before the Court. Therefore, on considering the gist of the prosecution as mentioned right from Sections 111 to 113 of Cr.P.C., it is clear that if the Executive Magistrate gets information that a person is likely to commit breach of peace or disturb the public tranquility (107 Cr.P.C) or if any person intentionally makes any publication which attracts the offences under Sections 153 (a) and 153(b) of Cr.P.C. etc, or any person within its jurisdiction makes an attempt to conceal himself (Section 109 of Cr.P.C) and finally, in case, if a person, who is a habitual offender etc, as defined under Sections 110 (a) to (g) of Cr.P.C., the learned Executive Magistrate



can initiate proceedings under Section 111 of Cr.P.C. The learned Executive Magistrate has to pass an order in writing the grounds on which, the person requires to execute a bond.

7. In the case on hand, the petitioner has received summons without any substance. It is not clear as to the information that the learned Executive Magistrate has received under Section 110 of Cr.P.C. There is no order passed by the learned Executive Magistrate under Section 111 of Cr.P.C. The summons which do not contain substances of information and without speaking orders of the learned Executive Magistrate, is against the procedure contemplated under the Code of Criminal Procedure. This Court in CrI.O.P.(MD).No.9691 of 2020, dated 14.09.2020, similar to that of case on hand, the learned Executive Magistrate has not mentioned substance of the information that the copy of the request of respondent Nos.2 and 3 Police and the copy of the orders of the learned Executive Magistrate have not been enclosed, thereby, the impugned summons issued were quashed.

8. Accordingly, the summons issued vide proceedings in A1-M.C/37/2023 by the first respondent / Second Class Executive Magistrate cum Tahsildar, dated 04.08.2023, is hereby quashed and this



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Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

29.08.2023

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

To

- 1.The Second Class Executive Magistrate
cum Tahsildar,
Tahsildar Office, Rajasingamangalam,
Ramanathapuram District.
- 2.The Inspector of Police,
Rajasingamangalam Police Station,
Rajasingamangalam,
Ramanathapuram District.
- 3.The Inspector of Police,
Thiruppalaikkudi Police Station,
Thiruppalaikkudi,
Ramanathapuram District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN. J.

tsg

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