



CRL OP(MD). No.19314 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.03.2023

Pronounced on : 25.07.2023

CORAM:

The Hon`ble Mr.Justice G.ILANGO VAN

CRL OP(MD).No.19314 of 2022

Thasin @ Mohammed Thasin

... Petitioner

Vs

1.The Executive Magistrate cum
Deputy Commissioner of Police East (Incharge),
The Executive Magistrate cum
Deputy Commissioner of Police West,
Tirunelveli.

2.The Inspector of Police,
Melapalayam police station,
Melapalayam, Tirunelveli.

...Respondents

Prayer: Petition filed under Section 482 of Criminal Procedure Code to issue a direction, directing respondent No.1 to follow the legal procedures enshrined in the code of criminal procedures and to furnish the final order under Section 117 Cr.P.C., to the petitioner as per Section 363(3) of Cr.P.C.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.S.Manikandan
Government Advocate (Crl.side)



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ORDER

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This Criminal Original petition has been filed seeking a novel relief. The petitioner is facing proceedings under Section 110 of Cr.P.C., before the first respondent in LIR No. 21 of 2022. According to him, he appeared before the first respondent in pursuance of the same. But he was pressurized to execute bond for Rs.50,000/-. Challenging the above said summons he filed CrI.O.P(MD)No.12428 of 2022 to quash the proceedings. But that was dismissed by this Court. He again appeared before the respondent in pursuance of summon dated 13.06.2022. The enquiry was conducted on 25.08.2022 without hearing his objections. He was pressurized to execute a bond for Rs.50,000/-, he also executed it. But order copy was not served upon him. So he sent a representation on 17.09.2022, till now the above said copy of the order was not furnished to him. On that account, this petition has been filed, seeking a direction to the first respondent to furnish copy of the order.

2. Without going into other aspects, the legality of the action initiated by the first respondent is required to be looked into. The power of the Deputy Commissioner of police to act as an Executive Magistrate



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also came up for consideration in a judgment reported in *Devi Vs The Executive Magistrate cum Deputy Commissioner of Police, St. Thomas Mount District reported in 2020 6 CTC 257*, in that case it was decided that no such power is available to the Deputy Commissioner of police. The above said view was also confirmed by the Hon'ble Division Bench of this Court on a reference made in this behalf, a judgment reported in P.Sathish @ Sathish Kumar Vs The State dated 13.03.2023.

3. In view of the above settled position of law, the action that was initiated by the first petitioner on the basis of the recommendation made by the second petitioner and the order passed by the first respondent in LIR No.21 of 2022 stands set aside. But however liberty is granted to the competent authority to initiate fresh action if the cause of action still survives.

4. Accordingly, this Criminal Original Petition stands allowed.

25.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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G.ILANGO VAN, J.

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To

- 1.The Executive Magistrate cum
Deputy Commissioner of Police East (Incharge),
The Executive Magistrate cum Deputy Commissioner of Police West,
Tirunelveli.
- 2.The Inspector of Police, Melapalayam police station,
Melapalayam, Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Pre-Delivery Order made in

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Date: 25.07.2023