



CrI.O.P.(MD) No.16174 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	20/9/2023
Delivered on	29/9/2023

CORAM:

THE HONOURABLE DR.JUSTICE **D.NAGARJUN**

CrI.O.P.(MD) No.16174 of 2023

and

CrI.M.P(MD)No.12879 of 2023

Prabhu

... Petitioner

Vs.

1.The II Class Executive Magistrate-cum-
The Tahsildar,
Paramakudi,
Ramanathapuram District.

2.The State rep. by
The Inspector of Police (Law & Order),
G4, Nainarkoil Police Station,
Ramanathapuram District.

...Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for records pertains to M.C.No.32 of 2023, dated 24.07.2023, on the file of the first respondent and quash the same.



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For Petitioner : Mr.G.Vishnuram
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 the summons issued by the learned II Class Executive Magistrate-cum-the Tahsildar, Paramakudi, dated 24.07.2023 in M.C.No.32 of 2023, directing the petitioner to appear before him on 18.08.2023.

2. The second respondent / the Inspector of Police (Law & Order), G4, Nainarkoil Police Station, Ramanathapuram District, has submitted a report to the II Class Executive Magistrate-cum-the Tahsildar, Paramakudi / first respondent herein under LIR No.43 of 2023 dated 7/8/2023, alleging that the petitioner is disturbing peace in the area and continue to disturb peace and in order to control the same, summons under Section 110 of Cr.P.C., dated 24/7/2023 have been issued to the petitioner.



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3. It is submitted by the counsel for the petitioner that the summons were issued mechanically, without following the procedure and the same suffers from lot of infirmities.

4. Learned Additional Public Prosecutor has submitted on the other hand submitted that summons do not suffer from any illegality.

5. Heard both sides and perused the records.

6. 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



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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);



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(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.

7. Issuance of summons by respondent No.1 / II Class Executive Magistrate-cum-the Tahsildar is not mechanical and learned II Class Executive Magistrate-cum-the Tahsildar is expected to pass orders judiciously after recording reason for issuance of summons as not every request of the Police Officers are required to be considered by respondent No.1.



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8. 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 as under:-

"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



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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 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



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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 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



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9. In the case on hand, on going through the impugned summons there is no mention that the learned II Class Executive Magistrate-cum-the Tahsildar has examined the documents submitted by the Inspector of Police (Law & Order) and came to the conclusion that there is sufficient material to proceed against the petitioner under Section 110 of Cr.P.C. Impugned Summons do not disclose number of sureties to be produced, amount of bond to be executed by the sureties. Further, in order to issue summons, under Section 110 of Cr.P.C., the second respondent has to place before the first respondent/Executive Magistrate that the petitioner has been not only involved in number of cases and was convicted on finding guilty. He shall be a habitual offender. But there is no such record.

10. In view of the above, the summons issued by the first respondent in M.C.No.32 of 2023, dated 24.07.2023 against the petitioner is hereby quashed. Accordingly, this petition is allowed. Consequently, connected miscellaneous



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WEB COPY petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
am/mvs.

29.09.2023

To

- 1.The II Class Executive Magistrate-cum-
The Tahsildar,
Paramakudi,
Ramanathapuram District.
- 2.The Inspector of Police (Law & Order),
G4, Nainarkoil Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

DR.D.NAGARJUN. J

am/mvs.



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**Pre-delivery order made in
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29.09.2023