



Crl.O.P.(MD) No.16544 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.09.2023

PRONOUNCED ON : 29.09.2023

CORAM:

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

CRL.O.P.(MD) No.16544 of 2023

and

CRL.M.P.(MD)No.13166 of 2023

Harish @ Hariharan

... Petitioner / Respondent

Vs.

1. The II Class Executive Magistrate-Cum-
The Thasildhar,
Paramakudi, Ramanathapuram District.

2. The State represented by
The Inspector of Police(Law & Order),
G2, Emaneshwaram Police Station,
Ramanathapuram District.

...Respondent / Complainants

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertains to M.C.No.169 of 2023 dated 16.08.2023 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.G.Vishnuram

For Respondents : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor



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ORDER

This petition is filed seeking quashment of the summons issued in M.C.No.169 of 2023, dated 16.08.2023 by the 1st respondent, directing the petitioner to appear before him on 28.08.2023 at about 03.00 p.m.

2.The first respondent has issued summons to the petitioner alleging that as per LIR No.43 of 2023 dated 7/8/2023, under Section 110 of the Code of Criminal Procedure of Emaneshwaram Police Station, he has been continuously indulging in activities disturbing the peace in the area and in order to control the same, summons are being given. It is submitted by the counsel for the petitioner that issuance of summons in M.C.No.169/2023 is irregularly against the principles of natural Justice and has sought for quashing the same.

3.The learned Additional Public Prosecutor for the respondents has fairly submitted that there is no substance of information and there are no details as to how many sureties have to be produced, etc.

4.I have perused the records, including the impugned summons issued by the 1st respondent. Whenever a complaint or reference is made by the



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Police alleging that the petitioner has been disturbing the peace, the 1st respondent is expected to give the information in detail as to how the petitioner has been disturbing the peace and only after recording the satisfaction in writing, he can issue the summons under Section 110 Cr.P.C.

5.Further, even otherwise the 1st respondent is expected to mention that what amount of bond has to be executed and how many sureties are required. Therefore, without mentioning the number of sureties to be produced including the quantum of the bond, the summons issued by the 1st respondent will not serve any cause.

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 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.

7. On going through the above provision, it is clear that merely because the petitioner is involved in number of cases, it does not give any ground to issue summons under Section 110 Cr.P.C. The respondent Police have to place on record to show that the petitioner is a habitual offender. In order to mention as a habitual offender, the pendency of cases is not a ground and in all the cases, charge sheets must have been filed and the criminal case against the petitioner should have been proved.



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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 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



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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 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



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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 liberty."

8.In view of the above, the summons issued by the 1st respondent in M.C.No.169 of 2023, dated 16.08.2023 against the petitioner is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

29.09.2023

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

Yuva



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- To
1. The II Class Executive Magistrate-Cum-
The Thasildhar,
Paramakudi,
Ramanathapuram District.
 2. The Inspector of Police(Law & Order),
G2, Emaneshwaram Police Station,
Ramanathapuram 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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