



CrI.O.P.(MD) No.16575 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	25.09.2023
Delivered on	29.09.2023

CORAM:

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

CrI.O.P.(MD) No.16575 of 2023
and
CrI.M.P.(MD).No.13296 of 2023

Chithires

... Petitioner

Vs.

1.The Tahsildar and Executive Magistrate II,
Agasteeswaram,
Kanyakumari District
In Case No.C2/MC 307/2023.

2.The Sub-Inspector of Police,
Thentharamaikulam Police Station,
Kanyakumari District.

...Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for records in Case No.C2/MC 307/2023 dated 10.03.2023 pending on the file of the first respondent and quash the same.



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For Petitioner

: Mr.P.T.Ramesh Raja

For R1 & R-2

: Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed under Section 482 of Cr.P.C. seeking to quash summons issued by the learned Tahsildar and Executive Magistrate II, Agasteeswaram, Kanyakumari District, dated 10.03.2023 in Case No.C2/MC 307/2023, directing the petitioner to appear before him on 09.08.2023 and explain as to why he shall not be ordered to execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) along with one surety.

2. It is submitted by learned counsel for the petitioner that the second respondent/the Sub-Inspector of Police, Thenthamaraikulam Police Station, Kanyakumari District, has registered a case as per L.I.R.No.33 of 2022 under Section 110 Cr.P.C dated 13.12.2022, alleging that the petitioner is a habitual offender, without any objective assessment and that the petitioner has no previous case, thereby he is not a habitual offender and that the respondent No.1 has



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mechanically issued the summons under Section 110 of the Code of Criminal Procedure.

3. Learned Additional Public Prosecutor has submitted on the other hand that the impugned summons issued by the first respondent does not suffer from any illegality. It is further submitted that the petitioner is not a habitual offender.

4. Heard both sides and perused the records.

5. On going through the copy of the summons issued, it is mentioned that the second respondent Police have registered a case as per L.I.R.No.33 of 2022 under Section 110 Cr.P.C dated 13.12.2022, alleging that the conduct of the petitioner would cause public nuisance.

6. Issuance of summons by respondent No.1 / Tahsildar and Executive Magistrate is not a mechanical act and he is expected to apply judicious mind and take a conscious decision prior to issuance of summons. Not, every request made



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7. 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—



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(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



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behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

8. On going through the above provision, it is clear that merely because if a person is involved in a case, it will not give any ground to the Executive Magistrate to issue summons under Section 110 of Cr.P.C. The Executive Magistrate has to satisfy that petitioner is a habitual offender. In the impugned summons, the details of cases pending are not mentioned.

9. 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



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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 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



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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 compulsive testimony carrying credence is abundantly



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WEB COPY 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."*

10. Considering the above, it cannot be said that petitioner is a habitual offender. In view of the above, the summons issued by the first respondent in Case No.C2/MC 307/2023 dated 10.03.2023 against the petitioner is hereby quashed. Accordingly, this petition is allowed. Consequently, the connected miscellaneous petition is closed.

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

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To

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- 2.The Sub-Inspector of Police,
Thenthamaraikulam Police Station,
Kanyakumari 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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Pre-delivery order made in
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