



CRL OP(MD). No.22737 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.03.2023

Pronounced on : 27.07.2023

CORAM:

The Hon`ble Mr.Justice G.ILANGO VAN

CRL OP(MD).No.22737 of 2022

in

CrI.M.P.(MD)No. 16095 of 2022

1.Gopalan

2.Suresh

3.Swamydhas

4.Manikandan

5.Little flower

6.Jansimary

... Petitioners

Vs

1.The Sub Divisional Magistrate cum Sub Collector,
Padmanabhapuram,
Kanniyakumari District.

2.The Sub Inspector of Police,
Karungal police station,
Kanniyakumari District.

...Respondents

Prayer: Petition filed under Section 482 of Criminal Procedure Code to call for the records pertaining to the order passed by the first respondent in case No.MC.No.69 of 2022 under Section 107 read with Section 117 of Cr.P.C., dated 26.09.2022 and quash the same as illegal.

For Petitioners : Mr.K.P.Narayanakumar



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

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the order passed by the first respondent in case No.MC.No.69 of 2022 under Section 107 read with Section 117 of Cr.P.C., dated 26.09.2022 and quash the same as illegal.

2. The facts in brief is that the Inspector of Police, Karungal police station, sent a communication dated 20.09.2022, to the respondent herein stating that a stone quarry which is situated in Survey No.634 in Killiyoor A Village, Killiyoor Taluk, which belongs to one Boopathy. Quarry license was obtained and stones were transported to Theyngaipattinam harbour area. When the stone were transported, the accused caused trouble and created frequent law and order issue. Because of the above said issue, continuous trouble exists between the parties causing breach of peace in the locality. On the basis of the above said communication, the second respondent initiated action under



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Section 107 of Cr.P.C., against these petitioners.

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3. Challenging the same this petition has been filed seeking quashment of the summons on the ground that no proper procedure was followed by the respondent while initiating above said action.

4. Section 107 Cr.P.C. reads under:

“107. Security for keeping the peace in other cases

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance



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is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction”

5. A more comprehensive discussion has been made by the Co-ordinate Bench of this Court in CrI.R.C.(MD).No.78 of 2020, in the case of ***Devi Vs. Executive Magistrate cum Deputy Commissioner of Police and another***, touching upon the history of the evolution of the Section and the persons who were facing the above said proceedings, which we are not very much concerned here. That case was defended entirely with regard to the vesting of executive powers with police officials. But, now it has been settled that the proceedings under Section 107 Cr.P.C. is a judicial proceedings. As observed in the the case of ***Syed Ibrahim and others Vs. Deputy Commissioner of Police Law and Order cum Executive Magistrate, Madurai City***, the due process must be followed. So as stated above, notice must accompany a copy of the order made by the Executive Magistrate.



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6. Apart from the above said legal ground, some facts and circumstances also raised by the respondents stating that a fake certificate is created by the above said quarry owner and an Advocate Commissioner was appointed vide order in W.P.(MD)No.24143 of 2022. The commissioner inspected the property and found that several houses are situated around the quarry. There is nothing amount to illegal and creating law and order problem inviting breach of peace.

7. Regarding the second fact and ground the petition will not lie and the only point to see whether the apprehension of breach of peace by the Inspector of Police was based upon ground situation and whether for initiating the proceedings, the respondent has followed the settled position of law as mentioned above.

8. Reading of the summons shows that an elaborate discussion has been made by the respondent in the above said summons. It is set out the facts and circumstances and as well as the subjective satisfaction of the respondent to initiate action. So that cannot be found fault. The problem



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lies in the order passed by the respondent in M.C.No.69 of 2022. The order reads that summon was issued to the petitioners and also directed to appear before the respondent on 26.09.2022. The report was received from the Inspector of Police and finding that already the petitioners were directed to execute bond on 22.09.2022 for six months. Further particulars are not available. While undertaking the enquiry it appears that no proper procedure was followed. Not even the statement of the Inspector of Police was recorded. Show cause also been sought for from the petitioners by referring the earlier occurrence stating that frequent trouble was made by the petitioners at the time of transport of stones by the above said Boopathy who is the quarry licence owner, they are bound to execute bond for six months. Not the amount of bond is mentioned and not even the surety particulars are mentioned. So this order suffers from the subjective satisfaction of the respondent. Not ordering the execution of the bond, since a reasoned judicial order by examining the parties, ought to have been passed. Hence it is suffers from, the above said procedural lapses. On the above said ground, the order is liable to be set aside. Accordingly, the proceedings in case No.MC.No.69 of 2022dated 26.09.2022, is set aside but however, the



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authorities may initiate fresh action against the petitioners, if still the breach of peace is apprehended.

9. Accordingly, this Criminal Original Petition is allowed.

Consequently, connected miscellaneous petition stands closed.

27.07 .2023

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

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To

- 1.The Sub Divisional Magistrate cum Sub Collector,
Padmanabhapuram, Kannyakumari District.
- 2.The Sub Inspector of Police, Karungal police station,
Kannyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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G.ILANGO VAN, J.

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Pre-Delivery Order made in
CRL OP(MD).No.22737 of 2022
in
CrI.M.P.(MD)No. 16095 of 2022

Date: 27.07.2023