



Crl.O.P.(MD) No.20994 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **22.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.O.P.(MD)No.20994 of 2023

Raja Santhakumar

... Petitioner

Vs.

1.The State rep. by
The II Class Executive Magistrate Cum Tahsildar,
Gandarvakottai,
Pudukottai District.

2.The Inspector of Police,
Gandarvakottai Police Station,
Pudukottai District.

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the impugned order passed by the respondent in his proceedings in quash relating to the impugned order to case by the respondents in M.C.No.15/2023/B7 dt. 16.05.2023 and to set aside the same.

For Petitioners :Mr.M.Pandian

For Respondents :Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)



Crl.O.P.(MD) No.20994 of 2023

ORDER

WEB COPY This Criminal original petition has been filed against the order passed by the first respondent in M.C.No.15/2023/B7 dt. 16.05.2023.

2.The proceedings has been initiated under Section 117 Cr.P.C., stating that this petitioner is involved in illegal activities causing breach of peace. Reading of the order shows that there is complete non-application of mind. It has been stated that on 16.05.2023 the above said order has been passed only based on the informations given by the second respondent.

3.The learned Additional Public Prosecutor appearing for the respondent submitted that the procedure has been followed properly. According to the learned Additional Public Prosecutor, the petitioner was summoned and enquired on 12.05.2023 and sufficient opportunity was given to him.

4.The learned counsel for the petitioner submitted that the first respondent has not given any notice to the petitioner. Even though



Crl.O.P.(MD) No.20994 of 2023

subsequent happenings are there, the procedure has not been properly followed. For that purpose, the learned counsel for the petitioner relied upon a decision of this Court in **P.Sathish @ Sathish Kumar Vs. State represented by the Inspector of Police**, reported in **2019 (2) MWN (Cr.) 136** and the relevant passages are extracted herein.

“1.Notice to be sent to the person by the Executive Magistrate to show cause as to why action under Section 122(1)(b) of Cr.P.C should not be taken for breach of the bond executed under Section 117 Cr.P.C on a date fixed.

2.At the enquiry, the Executive Magistrate should furnish the person the materials sought to be relied upon, including statements of witnesses, if any, in the vernacular (if the person is not knowing the language other than his mother tongue).

3.If the person wishes to engage an Advocate to represent him at the enquiry, an opportunity to have a counsel of his choice should be provided to him.

4.The Executive Magistrate shall inform the person about his right to have the assistance of a lawyer for defending him in the enquiry.

5.The enquiry shall be conducted by the Executive Magistrate on the notified date or such other date as may be fixed and the person should be allowed to participate in the



same.

6.At the enquiry, an opportunity should be given to the person to :(i) Cross-examine the official witnesses, if any and (ii) produce documents and witnesses, if any, in support of his case.

7.Such Executive Magistrate or his successor in office, should then, apply his mind on the materials available on record, in the enquiry, and pass speaking order.

8.An order under Section 122(1)(b) of Cr.P.C should contain the grounds upon which the Executive Magistrate is satisfied that the person has breached the bond.

9.A copy of the order should be furnished to the person along with the materials produced at the enquiry.

10.The enquiry, as far as possible shall be completed within 30 days and at no circumstances, the enquiry shall be adjourned unnecessarily. The advocates, who appear on behalf of the persons concerned, are expected to co-operate with the enquiry process for its expeditious completion.”

5.In view of the above, this petition is liable to be allowed and accordingly, **allowed** and the order passed by the first respondent in M.C.No.15/2023/B7 dt. 16.05.2023, is hereby set aside. However, liberty is granted to the respondent herein to initiate fresh action, if so



Crl.O.P.(MD) No.20994 of 2023

required, by following the procedure that has been set out in the above
said Judgment.

22.11.2023

Internet : Yes / No

Index : Yes / No

TM

To

1.The II Class Executive Magistrate Cum Tahsildar,
Gandarvakottai,
Pudukottai District.

2.The Inspector of Police,
Gandarvakottai Police Station,
Pudukottai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD) No.20994 of 2023

G.ILANGOVAN. J.

TM

CrI.O.P.(MD)No.20994 of 2023

22.11.2023