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CrI.O.P.(MD)No.22984 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.01.2023

Delivered on : 06.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.22984 of 2022

and

CrI.M.P.(MD)Nos.16281 and 16282 of 2022

D.Senthil

... Petitioner

vs.

1.The Sub Divisional Magistrate/
Revenue Divisional Officer,
Pattukottai,
Thanjavur District.

2.The State represented by
The Inspector of Police,
Madukkur Police Station,
Thanjavur District.

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to the impugned order under Section 113 and 111 of Cr.P.C. bearing M.C.No.236/2022/A3 on the file of the first respondent dated 19.12.2022 and quash the same as illegal.

For Petitioner : Mr.K.Mahendran

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



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ORDER

The above Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the order passed in M.C.No.236/2022/A3 on the file of the first respondent dated 19.12.2022 and quash the same.

2. The case of the petitioner is that the first respondent has issued summons under Section 113 Cr.P.C. directing him to appear for an enquiry on 28.12.2022, without following the procedure contemplated under Section 111 Cr.P.C., for initiating proceedings under Section 107 Cr.P.C.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

4. The learned counsel appearing for the petitioner would contend that the first respondent has directly issued show cause notice under Section 113 Cr.P.C., without following the procedure contemplated under Section 111 Cr.P.C., that the first respondent has to issue show cause notice under Section 111 Cr.P.C. and only thereafter, he can issue



summons under Section 113 Cr.P.C., that the second respondent, without mentioning the cases involved by the petitioner, sent a report to the first respondent to initiate proceedings under Section 107 Cr.P.C., as if, the petitioner had committed breach of peace and disturbing public tranquility in the jurisdiction of the second respondent and that the first respondent, without recording his satisfaction, accepted the report and passed the impugned order.

5. The learned Additional Public Prosecutor appearing for the respondents would submit that the impugned summons has been issued only directing the petitioner to appear for an enquiry and even though, the summons has been issued under Section 113 Cr.P.C., it is only the notice issued under Section 111 Cr.P.C.

6. I have considered the rival submissions and perused the materials available on record.

7. It is necessary to refer the provisions of Sections 111 and 113 Cr.P.C., which reads as follows:-

“111 Cr.P.C. - Order to be made. When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause



under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

113 Cr.P.C. - Summons or warrant in case of person not so present. If such person is not present in Court, the Magistrate shall issue in a summons requiring him to appear; or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court: Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.”

8. It is pertinent to note that the impugned summons has been issued by the first respondent under Section 113 Cr.P.C. for initiating the proceedings under Section 107 Cr.P.C.

9. As rightly contended by the learned counsel appearing for the petitioner, the Executive Magistrate before ever taking any action under



Section 107 Cr.P.C. should issue show cause notice under Section 111 Cr.P.C. setting forth the substance of the information received by him and the amount of bond to be executed and also the duration of the bond and that after issuing show cause notice under Section 111 Cr.P.C., if that person fails to appear for enquiry then he can issue summons under Section 113 Cr.P.C.

10. In the case on hand, as already pointed out, the first respondent, without issuing any show cause notice under Section 111 Cr.P.C., has directly issued the summons under Section 113 Cr.P.C.

11. It is not the case of the respondents that order has already been passed under Section 111 Cr.P.C.

12. Considering the above, this Court has no hesitation to hold that the impugned summons issued under Section 113 Cr.P.C. directly without following the procedure under Section 111 Cr.P.C. is not good in law and the same is liable to be quashed.

13. In the result, this Criminal Original Petition stands allowed and the impugned summons dated 19.12.2022 issued by the first respondent in M.C.No.236/2022/A3 is hereby quashed. However, the first



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respondent is at liberty to issue fresh notice to the petitioner under Section 111 Cr.P.C. and proceed further, in accordance with law.

Consequently, connected Miscellaneous Petitions are closed.

06.02.2023

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

To

- 1.The Sub Divisional Magistrate/
Revenue Divisional Officer,
Pattukottai,
Thanjavur District.
- 2.The Inspector of Police,
Madukkur Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

csm

Pre-delivery order made in
Crl.O.P.(MD)No.22984 of 2022
and
Crl.M.P.(MD)Nos.16281 and 16282 of 2022

Dated : 06.02.2023