



Crl.O.P.(MD) No.20892 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD)No.20892 of 2023
and C.M.P.(MD).Nos.16399 and 16398 of 2023

Kanbagaraj @ Kanagu

... Petitioner

Vs.

1.The Second Class Executive Magistrate and Tahsildar,
Office of the Revenue Divisional Officer,
Rajapalayam Sub Division,
Virudhunagar District.

2.The Inspector of Police,
Dhalavaipuram Police Station,
Virudhunagar District.

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records connected with the proceedings issued by the first respondent in M.C.No.275/2023 dt.10/11/2023 and quash the same as illegal.

For Petitioner :Mr.R.Alagumani

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



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ORDER

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2.A batch of Criminal Original Petitions in Crl.O.P.(MD).No.4769 of 2022 and batch, are disposed of by this Court touching the matters involved in this issue. 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 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”

3.A more comprehensive discussion has been made by the Co-ordinate Bench of this Court in Crl.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 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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3. With this background let us see the present case. In this case, apprehending the breach of peace in the locality, the summon was issued on the basis of the informations given by the second respondent, calling upon the petitioner to appear before the first respondent for enquiry on a particular date. Except that no other information or order has been enclosed to satisfy the requirement of law.

4. As mentioned above, it does not satisfy the requirement of law. On that ground, this petition is liable to be allowed. But, however, liberty is granted to the first respondent to initiate fresh action, if sufficient information is received from the second respondent, if any necessity arises.

5. With the above said liberty, this criminal original petition is allowed and the proceedings initiated by the first respondent in this petition is hereby quashed. Consequently, connected miscellaneous petitions are closed.

22.11.2023

Internet : Yes / No
Index : Yes / No
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To
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- 1.The Second Class Executive Magistrate and Tahsildar,
Office of the Revenue Divisional Officer,
Rajapalayam Sub Division,
Virudhunagar District.
- 2.The Inspector of Police,
Dhalavaipuram Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN. J.

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