



Crl.O.P.No.12831 of 2024
& Crl.M.P.No.7860 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 10.06.2024

Pronounced on: 19.06.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.12831 of 2024
& Crl.M.P.No.7860 of 2024

1. Aswathaman.
2. Ajith Raj.
3. Visalakshi.
4. Ragul.
5. Sigamani @ Thadi Sigamani.
6. Manog Kumar. Petitioners/B-Party

/versus/

1. The Sub-Divisional Magistrate &
Revenue Division Officer,
Chennai – 600 066.

2. The State Rep. by its
The Inspector of Police,
P-3, Police Station,
Vyasarpadi, Chennai – 39.

3. S.Charles. Defacto Complainant&A-Party/Respondents

Prayer:- Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in ~~an~~ 7/1583/2024 dated 08.05.2024 on the file of the Sub Divisional Magistrate & Revenue Divisional Officer, North Division, Chennai – 66.



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For Petitioners : Mr.R.Sankarasubbu

For R1 & R2 : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition is filed under Section 482 of Cr.P.C., to quash the summon issued to the petitioners herein to participate in the proposed enquiry initiated under Section 107 of Cr.P.C.

2. The prime contention of the petitioners is that the summon suffers irregularity and bereft of particulars. The proceedings combining both A-party and B-Party is contrary to the dictum laid down by the Hon'ble High Court and therefore, the entire proceedings gets vitiated.

3. The respondent police has registered the case in Crime No.362 of 2023 for the alleged offence under Section 387 & 506(1) of I.P.C. The Sub Divisional Magistrate has intended to initiate proceedings under Section 107 of Cr.P.C., which is unjust, since the alleged offence could not attract breach of peace.



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4. Further, the Learned Counsel for the petitioners also submitted that the entire proceedings were motivated with malice and excessive exercise of power conferred to the Sub Divisional Magistrate.

5. The Learned Counsel for the petitioners rely upon the following judgments:-

(i). *K.V.Shanmugam -vs- State* reported in 1978 LW (Crl) 130.

(ii). *Ayyavoo Chettiar and others -vs- The Inspector of Police, Ennore Circle, Ennore, Kuppuraj and others* reported in 1984 L.W.(Crl) 112 and submitted that twin test not been satisfied in the present case.

6. Per contra, the Learned Government Advocate (Crl.Side) for the respondents 1 & 2 submitted that in connection with Crime No.362 of 2023 registered under Section 387 & 506(1) of I.P.C., there is still dispute between the parties causing threat to public peace. Therefore, the Inspector of Police attached to P-3, Vyasarpadi, Police Station had requested the Sub Divisional Magistrate to conduct enquiry under Section 107 of Cr.P.C., for further proceedings. Therefore, the impugned summon was issued to the petitioners herein who are the members of A-Party and they were asked to appear before



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the Sub Divisional Magistrate on 21.05.2024 at 2.00 p.m. Whereas, the members of the B-Party were summoned to appear and participate in the enquiry in the morning at 10.00 a.m. Therefore, on the face of the summons issued it could be seen that the proceedings is not a combined proceedings for both the parties. Further, there is specific reference to the case pending against them and the consequential dispute between two groups been going unabated and therefore, it cannot be termed as summon without material facts to interfere. The petitioners, instead of participating in the enquiry had intentionally approached this Court to stall the lawful enquiry initiated against these petitioners.

7. The Learned Government Advocate (Crl.Side) appearing for the respondents 1 & 2 submits that the twin test laid down by the High Court had been scrupulously following in the case in hand.

8. Heard the Learned Counsel for the petitioners and the Learned Government Advocate (Crl.Side) for the respondents 1 & 2.



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9. The Learned Counsel for the petitioners heavily harp on the point that for a single crime, the Executive Magistrate cannot exercise his power conferred under Chapter VIII of Cr.P.C and further, when the notice does not satisfy the twin conditions, namely, material details relating to the incident and satisfaction of the magistrate that a situation calls for issuing of show cause notice and further, clubbing of both A & B parties together who are members of hostile group, through a common proceedings under Section 107 of Cr.P.C., cannot sustain.

Section 107 of Cr.P.C., reads as below:-

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



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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.

10. The impugned summon discloses the case pending against these petitioners and the parties to the proceedings who fall under A & B party. Based on the request made by the Inspector of Police, the Executive Magistrate has proceeded to issue notice. There is specific reasons stated in the notice that members of the both parties are frequently quarrelling with each other. The case against the petitioner is in connection with extortion, putting a person in fear of death or of grievance hurt. The frequent quarrel among two groups had caused disturbance to the public peace. Therefore, the jurisdictional Police had requested the Executive Magistrate to initiate proceedings under Section 107 of Cr.P.C.



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11. The judgments relied by the Learned Counsel for the petitioners emphasis how the Magistrate to act while exercising his Magisterial power.

12. For better clarity, relevant portion of the judgments are extracted below:-

(i). ***K.V.Shanmugam -vs- State reported in 1978 LW (Crl) 130.***

4. For viewing the controversy in the proper perspective, a brief reference to the relevant provisions in the Code of Criminal Procedure is called for S. 107 is the relevant provision in the Code which empowers a Magistrate to take action against a person or persons against whom information is laid about his or their likelihood of committing breach of peace or disturbance of public tranquility. On receipt of information the Magistrate has to issue an order under S. 111 of the Code. S. 112 prescribes the procedure to be followed in respect of persons present in Court against whom information has been laid for action being taken under S. 107 or S. 108 or S. 109 or S. 110. S.113 empowers the Magistrate to issue a summons or warrant against a person whose presence is required in Court and the



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Proviso to that Section confers powers on a Magistrate to pass ex parte orders in cases of urgency. S. 114 lays down that whenever a summons or warrant is issued against a person or persons under S. 113 of the Code the summons or warrant should be accompanied by a copy of the order under S. 111 and the copy of the order should be served on the person or persons concerned. After the several formalities have been complied with, the Magistrate has to enquire into the truth of the information under S. 116 of the Code. Lastly, S. 117 provides that if the Magistrate is satisfied about the truth of the information laid against a person or persons, he may pass an order directing the counter-petitioner or counter-petitioners to give security for keeping the peace or for maintaining good behaviour as the case may be. If the security ordered for, is not given, the Magistrate has to act under S. 122 of the Code and commit the counter-petitioner or counter-petitioners to prison for the duration stipulated for keeping the peace.

5. A study of the several Sections clearly shows that as soon as information is laid before a Magistrate, he has to exercise his Magisterial powers and take action against the person or persons against whom information has been laid. Such action, commencing from the issuing of an order under S. 111 and



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culminating in the passing of an order to furnish security under S. 117 or an order of discharge under S. 118, has to be performed in the manner laid down by the Code, because the Magistrate exercises at each stage his Magisterial powers under the Code. When the matter is viewed in that perspective, it will be clear that a notice issued under S. 111 has to satisfy a double test. The first is that the notice must furnish all the information which is laid against a person or persons and secondly, before issuing a notice, the Magistrate has to satisfy himself that the situation calls for the issuing of a show cause order. As regards the first requirement, the words in Sill contain the direction of the Legislature the Magistrate. The words are as given below:

...he shall make an order in writing, setting forth the substance of the information received....

6. No doubt, S. 112 stipulates that when a person in respect of whom an order is made is present in Court, the order shall be read over to him or if he so desires, the substance thereof shall be explained to him. But, this does not mean that the initial notice or order need not contain the substance of the information. What has to be read over or explained to a person under S. 112 can only be the contents of an order under S. 111 and not



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something which is not incorporated in the said order.

That the Legislature has not provided for two kinds of orders, viz., a bare or formal order under S. 111 and a detailed and comprehensive order under S. 112, can be seen from the wording of S. 116 which is in the following terms:

When an order under S. 111 has been read or explained under S. 112....

7. A conspectus of the several Sections makes it abundantly clear that even at the outset a comprehensive order has to be passed and that order should contain all the details of the information laid against a person or persons. The reason for the Legislature having given such a direction is not far off to see. Anyone, who is directed by an order under S. 111 to appear in Court and show cause why proceedings should not be taken against him, should know what is the information laid against him and what sort of repudiation he should make. Burn, J. laid down in Bahadur Patnaik v. Emperor 1933 M.W.N. 137 that a mere reference to a police report in a preliminary order under S. 112, CrI.P.C. will not be sufficient compliance with the direction of the Legislature and the Magistrate should extract and state plainly in the order the facts which, in his opinion,



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would, if established by evidence, necessitate the asking of security from the counter-petitioner. King, J. went a step further and held in *Santhanaramaswami v. Emperor* 1937 M.W.N. 189 that an order under S. 112 , Crl.P.C. should not only contain the substance of the information laid against a counter-petitioner, but even details such as time, place and the identity of the persons alleged to have been threatened should also be given. In the instant case, the show cause order issued by the Magistrate does not contain the substance of the information laid against the counter-petitioners, nor details relating to time, place, persons affected, etc. On this ground, the show cause order issued by the Magistrate has to be struck down as a defective one.

(ii). Ayyavoo Chettiar and others -vs- The Inspector of Police, Ennore Circle, Ennore, Kuppuraj and others.

5. A perusal of this order shows that the Magistrate has not given any material details relating to the incidents which led the Inspector of Police, Ennore, to lay the information under Section 107, Code of Criminal Procedure In *Thirumalaiappa Gounder alias C. Chinnaswamy and others In Re* : 1981 L.W. (Crl.)



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106. I have pointed out that a notice under Section 111 of the Code of Criminal Procedure, has to satisfy a double test. The first is that the notice must furnish all the information which is laid against a person or persons, and the second is, before issuing a notice, the Magistrate has to satisfy himself that the situation calls for issuing of a show cause order. There is nothing in the preliminary order to indicate that the Magistrate has made an objective assessment about the truth and urgency of the information laid before him. Merely mentioning or extracting the relevant section of the Code of Criminal Procedure is not sufficient. The order does not contain any information which is likely to cause breach of peace. No instance has been mentioned. Therefore, the first contention is well founded.

6. In this proceeding both the A and B Parties are clubbed together. They are members of hostile groups. This Court-in Sadayan and Ors. v. Paramasivam and Ors. : 1983 L.W. (Crl.) 218 has taken the view that two opposing parties to a proceeding under Section 107 of the Code of Criminal Procedure, cannot be proceeded against and bound over in one and the same proceeding. The same view is expressed in K.P. Murugesan and 9 others v. State by Inspector of Police, Keeranur, Palani Taluk, and Ors: 1983 L.W. (Crl.) 251. The order is,



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therefore, clearly vitiated and has to be quashed on this ground also.

13. The impugned summons is the beginning of enquiry, on receipt of information about the likelihood of committing breach of peace or disturbance to public tranquillity. The summon is not issued under Section 111 of Cr.P.C. It is the stage prior to the issuance of notice under Section 111 of Cr.P.C. The Executive Magistrate has issued the impugned notice to satisfy himself whether the situation calls for the issuing of show cause order. Therefore, what is required in a notice issued under Section 111 of Cr.P.C., shall not necessarily be incorporated in the pre-enquiry stage. What could be understood from the summons impugned is that it is prior notice to conduct a preliminary enquiry among the parties in connection with the recommendation given by the Inspector of Police to satisfy whether to proceed under Section 107 of Cr.P.C. Therefore, it is clarified that the impugned notice since not issued under Section 111 of Cr.P.C., and it contain necessary information for the parties to participate in the enquiry, the judgments cited above are not applicable at this stage. Further, as clarified by the Learned Government Advocate (Crl.Side), there is no clubbing of parties together in the proceedings.



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The parties are called to participate in the preliminary enquiry at different time.

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14. The Learned Government Advocate (Crl.Side) for the respondent ensures that if the Magistrate intends to proceed further after this preliminary enquiry, the proceedings against the parties will be separate and will not be clubbed together. It is also clarified that after this preliminary enquiry if the magistrate is satisfied, he shall proceed in accordance with guidelines issued by this Court in ***K.V.Shanmugam -vs- State*** and the judgment rendered by Division Bench in ***P.Sathish @ Sathish Kumar v. State Rep. by, The Inspector of Police Law & Order, H-4, Korukkupet Police Station, Chennai – 600 021 and others.***

15. Recording the said undertaking, this Criminal Original Petition is disposed of. If the respondent police is intend to take action under Section 107 of Cr.P.C., same shall be done in accordance with law as clarified above.

16. Accordingly, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.



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Index :Yes/No.

Internet :Yes/No.

Speaking Order/Non-speaking order
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Copy to:-

1. The Sub-Divisional Magistrate & Revenue Division Officer,
Chennai – 600 066.
2. The Inspector of Police, P-3, Police Station, Vyasarpadi, Chennai – 39.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.

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Pre-delivery order made in
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