



CrI.OP(MD)No.9794 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 29.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CrI.OP(MD)No.9794 of 2024
and
CrI.MP(MD)No.6682 of 2024

V.C.Sankaranarayanan

: Petitioner

Vs.

1.The Superintendent of Police,
Virudhunagar District.

2.The Sub-Inspector of Police,
Vanniyampatti Police Station,
Virudhunagar District.

: Respondents

PRAYER: Petition filed under Section 482 Cr.P.C to call for the records relating to the summon issued by the second respondent to the petitioner dated 06.06.2024 and quash the same.

For Petitioner : Mr.S.Ramasamy

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



Crl.OP(MD)No.9794 of 2024

ORDER

WEB COPY

The petitioner is a practising Advocate. He has appeared before the respondent Police in connection with a petition enquiry and has issued a legal notice to the respondent Police on 28.05.2024 making certain allegations as against the second respondent, as if, the second respondent Police is interfering in a civil dispute. In turn, the second respondent has issued a summon to the petitioner u/s.41(1)(A) CrPC on 06.06.2024 calling upon the petitioner to appear for enquiry on 08.06.2024 @ 11.00 am. This summon dated 06.06.2024 is challenged in this original petition.

2.Learned Counsel for the petitioner submitted that for having discharged his duty as an Advocate to his client, one Subalakshmi, the second respondent has issued the impugned summon to this petitioner u/s.41(1)(A) CrPC. The second respondent is exceeding his jurisdiction and the summon issued to the petitioner is bad in law and is liable to be quashed.



Crl.OP(MD)No.9794 of 2024

3.Considering the manner in which the summon has been issued by a Police Officer to an Advocate for having defended his client, this Court directed the Deputy Superintendent of Police, Srivilliputhur, Virudhunagar, to look into this issue and to file a report.

4.The Deputy Superintendent of Police has filed a report that the Sub-Inspector of Police, Vanniyampatti Police Station, has conducted an enquiry in CSR.No.162 of 2024 on 06.06.2024. It was registered at the instance of one Subalakshmi, the petitioner's client, against one Sivasankari. The crux of that complaint is that Subalakshmi was running a spinning mill and doing business with a company run by Sivasankari. In that business, Subalakshmi owe a sum of Rs.7,67,599/-, for which, Sivasankari attempted to take the cotton thread bundles from Subalakshmi's mill. Based on the complaint of Subalakshmi, the second respondent Police has conducted a petition enquiry in CSR.No.162 of 2024 and in the course of enquiry, Subalakshmi has agreed to pay the due amount and the parties have also agreed for settlement with some conditions. However, the petitioner / Advocate of Subalakshmi has issued a notice stating that the said



Crl.OP(MD)No.9794 of 2024

settlement was coerced by the respondent Police by way of intimidation and his client's signature were obtained in blank papers. Shocked on these allegations, the Sub-Inspector has issued the notice u/s.41(1)(A) CrPC to the petitioner for enquiry, to ascertain this misconception and to clarify the petitioner on the real facts of the occurrence.

5.The Deputy Superintendent of Police has also produced the CCTV footage of Vanniyampatti Police Station from 25.05.2024 to 08.06.2024 and submitted that during the course of enquiry, neither Subalakshmi nor her Advocate was harassed and they have voluntarily appeared before the Officer and signed the document. The Deputy Superintendent of Police has stated that making such bald allegations by the petitioner, by using his privilege as an Advocate, as against the law enforcing agency is wrong. In fact, the petitioner's contention that the respondent Police is interfering in a civil dispute is not correct, inasmuch as the complaint was lodged only by the petitioner's client. Since both the parties agreed not to pursue the case, it was closed at the CSR stage itself.



Crl.OP(MD)No.9794 of 2024

6.This Court considered the rival submissions made on either side and perused the materials placed on record.

7.The petitioner's client Subalakshmi appears to have lodged a complaint before the second respondent Police that one Sivasankari, who has supplied certain materials, is harassing her. According to Subalakshmi, Sivasankari has trespassed into her company and attempted to take away the threads in a Ashok Leyland vehicle bearing Registration No.TN-84-K-5857. This complaint dated 25.05.2024 was treated as petition enquiry in CSR.No.162 of 2024. A summon was issued by the respondent Police and the said Sivasankari was called for enquiry. Subalakshmi and Sivasankari came to the police station along with their respective Advocates. Ultimately, both the parties appears to have agreed not to pursue the case and the case was closed at the CSR stage.

8.Now, Subalakshmi appears to have informed the petitioner / her Advocate that she was coerced to sign in blank papers. Based on that, the petitioner has issued the legal notice. As an Advocate, the petitioner is



entitled to issue a notice based on the information provided to him. In the event, if the information is wrong, the Officer ought to have informed the petitioner / Advocate about the incident that actually took place on the date, in the police station, during the course of enquiry. It is not proper on the part of the Sub-Inspector for issuing a summon to this petitioner.

9.In fact, the second respondent has issued the summon by quoting the provision u/s.41(1)(A) CrPC. There is no such provision in the Code. The only available Section is 41(1)(a) CrPC, which deals with the power of Police to arrest a person, without an order from the Magistrate and without a warrant. The same is extracted as under:-

"41.When police may arrest without warrant -

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(a) who commits, in the presence of a police officer, a cognizable offence ..."

10.Every action of a State Authority must be in accordance and in conformity with law. If a power is sought to be exercised by the State



Agency, the person receiving a notice must be shown as to under what provision of law it is being done. On a perusal of the summon, it is clear that it has been issued by quoting a wrong provision of law.

11.From the summons, the petitioner was called upon for enquiry. It is nothing but a notice for appearance. Therefore, the appropriate provision should be Section 41A(1) CrPC and the summons ought to have been issued under this provision. The same is extracted as under:-

"41A – Notice of appearance before Police Officer -

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice."

12.This provision enables the Police Officer to issue a notice for appearance. However, it can also be issued to a person, against whom a complaint has been made or a credible information has been received or a



Crl.OP(MD)No.9794 of 2024

reasonable suspicion exists that he has committed a cognizable offence.

Admittedly, the petitioner is not an accused in any criminal case pending on the file of the second respondent police. Therefore, even under the right provision, the impugned summon could not be issued.

13.In view of the foregoing discussions, this Court holds that the summon issued by the second respondent is against law and it is also issued without any application of mind. Therefore, the same is liable to be quashed.

Accordingly, this criminal original petition is allowed and the impugned summon dated 06.06.2024 issued by the second respondent is quashed. The petitioner is at liberty to work out his remedy in the manner known to law, if he is having any grievance that the complaint of his client was not dealt with by the respondent Police in a proper manner. Consequently, connected miscellaneous petition is closed.

Internet : Yes
gk

29.07.2024



Crl.OP(MD)No.9794 of 2024

To

WEB COPY

- 1.The Superintendent of Police,
Virudhunagar District.
- 2.The Sub-Inspector of Police,
Vanniyampatti Police Station,
Virudhunagar District.
- 3.The Deputy Superintendent of Police,
Srivilliputhur, Virudhunagar District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CrI.OP(MD)No.9794 of 2024

B.PUGALENDHI, J.

gk

CrI.OP(MD)No.9794 of 2024

29.07.2024