



W.P(MD)No.16025 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.16025 of 2024

and

W.M.P.(MD)No.13929 of 2024

S.V.Shanmugam

... Petitioner

Vs

**1. The 2nd Class Executive Magistrate
Cum Thasildar,
Athoor Taluk,
Dindigul District.**

**2. The Inspector of Police,
Chinaalapatti Police Station,
Chinalapatti, Dindigul District.**

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorari to call for the records pertaining to the impugned summon issued by the first respondent in Na.Ka.No.2228/2024/A3, dated 05.07.2024 and quash the same as illegal.



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For Petitioner : Mr.S.Sarvagan Prabhu,

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

ORDER

This Writ Petition has been filed seeking to quash the impugned summon issued by the first respondent in Na.Ka.No.2228/2024/A3, dated 05.07.2024 .

2.The learned Counsel appearing for the petitioner submits that instead of issuing the summon under Section 111 Cr.P.C., the first respondent has mechanically issued the summon under Sections 160 and 91 Cr.P.C.

For better reference, Sections 160 and 91 Cr.P.C. are extracted hereunder:

160. Police officer's power to require attendance of witnesses.

(1)Any police officer making an investigation under this Chapter may, by order in writing require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted



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with the facts and circumstances of the case; and such person shall attend as so required :Provided that no male person [under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] [Substituted for the words "under the age of fifteen years or woman" by Criminal Law (Amendment) Act, 2013] shall be required to attend at any place other than the place in which such male person or woman resides.

(2)The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

Section 91 Cr.P.C:Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed--

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

3.Since Section 160 Cr.P.C., which is a cognizable power vested on the police to require attendance of the witnesses during enquiry and Section 90 Cr.P.C., is also meant for such power vested with the Court or



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in charge of a police station for production of for requiring the parties to produce certain documents, this Court feels that the impugned notice was issued without any application of mind.

4. Therefore, the impugned notice is set aside. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.07.2024

Internet : Yes
Index : Yes/No
NCC : Yes/No
LR

To

1. The 2nd Class Executive Magistrate
Cum Thasildar,
Athoor Taluk,
Dindigul District.

2. The Inspector of Police,
Chinaalapatti Police Station,
Chinalapatti, Dindigul District.

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



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B.PUGALENDHI, J.

LR

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