



Crl.O.P(MD).No.21217 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2024

CORAM :

THE HON'BLE MR JUSTICE A.A.NAKKIRAN

Crl.O.P(MD).No.21217 of 2022 and
Crl.M.P(MD).No.14874 of 2022

Sarathkumar

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Anjugramam Police Station,
Kanyakumari District.
LIR.No.40 of 2022

... Respondent

PRAYER:- Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in impugned summons of the respondent, dated 09.10.2022 in proceedings in LIR No.40 of 2022 u/s. 110 Cr.P.C., and quash the same.

For Petitioner : Mr.S. Saravanakumar

For respondent : Mr.R.M.Anbunithi

Additional Public Prosecutor

ORDER

This Criminal Original petition has been filed to call for the records relating to the proceedings in impugned summons of the respondent, dated 09.10.2022 in LIR No.40 of 2022 u/s. 110 Cr.P.C., and quash the same.



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2. The case of the petitioner is that respondent has issued summon, dated 09.10.2022, in which, the respondent directed the petitioner to appear before him on 10.10.2022 at 10 p.m., for the proceeding under Section 110 Cr.P.C., without giving any particulars. After receipt of the said notice, the petitioner's counsel appeared and made objection that the Executive Magistrate is a competent authority to deal with the provision under Section 110 Cr.P.C., Once again the respondent directed the petitioner for enquiry on 25.11.2022, failing which, the respondent will arrest the petitioner. In such circumstances, the petitioner has come forward with the present Criminal Original Petition.

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

4. The learned counsel for the petitioner submitted that the procedure has not been properly followed. For that purpose, the learned counsel for the petitioner relied upon a decision of this Court in **P.Sathish @ Sathish Kumar Vs. State represented by the Inspector of**



Police, reported in 2019 (2) MWN (Cr.) 136 and the relevant passages are extracted herein.

“1.Notice to be sent to the person by the Executive Magistrate to show cause as to why action under Section 122(1)(b) of Cr.P.C should not be taken for breach of the bond executed under Section 117 Cr.P.C on a date fixed.

2.At the enquiry, the Executive Magistrate should furnish the person the materials sought to be relied upon, including statements of witnesses, if any, in the vernacular (if the person is not knowing the language other than his mother tongue).

3.If the person wishes to engage an Advocate to represent him at the enquiry, an opportunity to have a counsel of his choice should be provided to him.

4.The Executive Magistrate shall inform the person about his right to have the assistance of a lawyer for defending him in the enquiry.

5.The enquiry shall be conducted by the Executive Magistrate on the notified date or such other date as may be fixed and the person should be allowed to participate in the same.

6.At the enquiry, an opportunity should be given to the person to :(i) Cross-examine the official witnesses, if any and (ii) produce documents and witnesses, if any, in support of his case.

7.Such Executive Magistrate or his successor in



office, should then, apply his mind on the materials available on record, in the enquiry, and pass speaking order.

8.An order under Section 122(1)(b) of Cr.P.C should contain the grounds upon which the Executive Magistrate is satisfied that the person has breached the bond.

9.A copy of the order should be furnished to the person along with the materials produced at the enquiry.

10.The enquiry, as far as possible shall be completed within 30 days and at no circumstances, the enquiry shall be adjourned unnecessarily. The advocates, who appear on behalf of the persons concerned, are expected to co-operate with the enquiry process for its expeditious completion.”

5. In view of the above, this petition is liable to be allowed and accordingly, allowed and the impugned summon of the respondent, dated 09.10.2022 in LIR No.40 of 2022, is hereby quashed. However, liberty is granted to the respondent herein to initiate fresh action, if so required, by following the procedure that has been set out in the above said Judgment. Consequently, the connected miscellaneous petition is closed.

18.04.2024

Internet : Yes / No

Index : Yes / No

trp



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To

WEB COPY

1. The Inspector of Police,
Anjugramam Police Station,
Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



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A.A.NAKKIRAN, J.

Trp

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