



Crl.O.P.(MD)No.21806 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2024

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.21806 of 2024

and

Crl.M.P.(MD)No.13531 of 2024

Desingu

... Petitioner

Vs.

1.The State of Tamil Nadu, Rep. by
The II Class Executive Magistrate cum Tashildar,
Office of the II Class Executive Magistrate cum Tashildar,
Sankarankovil,
Tenkasi District.

2.The Inspector of Police,
Karivalamvanthanallur Police Station,
Tenkasi District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the entire records of the proceedings initiated by the first respondent in M.C.No.A1/558/2024, dated 22.11.2024 and quash the said proceedings as against the petitioner.

For Petitioner : Mr.D.Rajaboopathy

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed seeking for the relief to quash the proceedings in M.C.No.A1/558/2024, dated 22.11.2024, pending on the file of the first respondent.

2. The learned counsel for the petitioner would submit that though the order is in the form of show cause notice, it is bereft of details and not issued in accordance with law. The order does not disclose the substance of the information received and the amount of bond to be executed. He would further submit that this Court is having the power of judicial review under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 / Section 482 of Cr.P.C. or Article 226 of the Constitution of India in respect of a show cause notice issued under Section 110 r/w. Section 111 Cr.P.C. He would further submit that in the above said order, a Division Bench of this Court has clearly analyzed the provisions of Sections 107 to 116 of Cr.P.C. and came to the conclusion that in the show cause notice issued by the Executive Magistrate, some particulars in respect of execution of bond viz., the amount of the bond to be executed, and the number, character and class of sureties (if any)



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required, have to be mentioned. But, in this case, in the impugned summons, nothing was mentioned, which is against the principles set out in the above referred case.

3. The learned counsel would further submit that by this impugned order, the first respondent is attempting to dislocate the petitioner. Though factual adjudication of the satisfaction expressed by the Magistrate cannot be done, the impugned order does not contain the relevant materials and thereby, it has to be quashed.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondents would submit that for issuance of show cause notice, the aspects referred by the learned counsel for the petitioner, are not necessary. Only after completing the enquiry under Section 116 Cr.P.C., the II Class Executive Magistrate would come to the conclusion about the substance of information received and then only, he can order for fixing the amount of the bond to be executed.



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5. The entire submissions made by the learned counsel appearing for the petitioner is based on the decision rendered by a Division Bench of this Court in **Crl.O.P.No.17684 of 2015** in a case of **M.Krishnamurthy vs. Sub Divisional Magistrate-cum-Revenue Divisional Officer** reported in **2017 (1) Mad. W.N. (Cri) 199**, wherein, it is held as follows:

*"In our view, a show cause order under Section 107 r/w 111 can be subjected to judicial review under Section 482 Cr.P.C. or Article 226 of the Constitution of India, if on the face of it, the order does not satisfy the minimum requirements of Section 111 or that the same has been passed by a person who is not an Executive Magistrate and not otherwise. In other words, if the order does not contain the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required, only then, can the High Court interfere and not otherwise. Factual adjudication of the satisfaction expressed by Magistrate is ruled out in view of the decision of the Supreme Court in *Vicco Laboratories (supra)*."*

6. Under such circumstances, now, on going through the show cause notice dated 22.11.2024, issued by the first respondent, it is seen



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that nothing was mentioned about the amount of the bond to be executed, and the number, character and class of sureties (if any) required. Therefore, non-mentioning of the above particulars in the show cause notice dated 22.11.2024, by the first respondent, is against the decision rendered by this Court in **Crl.O.P.No.17684 of 2015** [cited supra].

7. In view of the above, the impugned order in M.C.No.A1/558/2024, dated 22.11.2024, passed by the first respondent is hereby set aside and this Criminal Original Petition is allowed. However, liberty is given to the first respondent to initiate proceedings afresh in accordance with law. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
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12.12.2024

To

1.The II Class Executive Magistrate cum Tashildar,
Office of the II Class Executive Magistrate cum Tashildar,
Sankarankovil,
Tenkasi District.



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- 2.The Inspector of Police,
Karivalamvanthanallur Police Station,
Tenkasi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR, J.

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Order made in
Crl.O.P.(MD)No.21806 of 2024

Dated: 12.12.2024