

Crl.O.P.(MD)No.19355 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.01.2025

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.19355 of 2024

and

Crl.M.P(MD).No.11948 of 2024

- 1.V.Nagaraj
- 2.R.Manickam
- 3.A.Thangavel
- 4.P.Ayyaperumal
- 5.R.Thirupathi
- 6.P.Ramamoorthi
- 7.K.Ganesan
- 8.M.Boominathan
- 9.M.Sivalingam
- 10.A.Shanmugam
- 11.S.Palanisamy
- 12.N.Ravichandran
- 13.V.Krishnan
- 14.K.Rajasekar

: Petitioners

Vs.

- 1.The Sub Divisional Magistrate
cum Sub Collector,
Kuzhithalai, Karur District.
- 2.The Inspector of Police,
Chinthamanipatti Police Station,
Karur District.
- 3.Mariappan
- 4.Muruganantham
- 5.Jeyapal
- 6.Chandrasekar
- 7.Arivalagan
- 8.Pitchai
- 9.Palaniappan



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10.Murugan
11.Thangavel
12.Arunkumar
13.Mahamuni
14.Muthukrishnan
15.Vadivel
S/o.Santhanam
16.Vadivel
S/o.Muniappan
17.Maheswaran

: Respondents

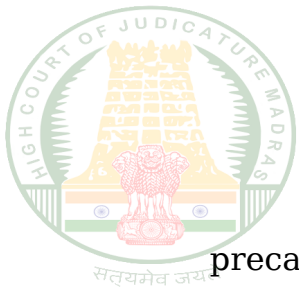
PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records relating to the summon in Na.Ka.No.A3/4446/2024 passed by the 1st respondent dated 23.09.2024, quash the same.

For Petitioners : Mr.A.Thiyagarajan
For R1 & R2 : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

Seeking to quash the summons in Na.Ka.No.A3/4446/2024 passed by the 1st respondent, dated 23.09.2024, the Petitioners are before this Court with this present Criminal Original Petition.

2. Mr.A.Thiyagarajan, the learned counsel appearing for the petitioners would submit that on 26.09.2024 the petitioners were served with the impugned summons, dated 23.09.2024, by the 2nd respondent, in which, the petitioners are directed to appear before the 1st respondent on 26.09.2024 at 11.00 a.m., in order to take

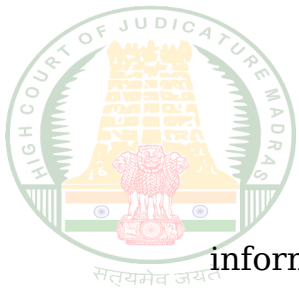


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precautionary action against the petitioners. Since the petitioners received the Summons on 26.09.2024, they are not able to appear before the 1st respondent. Subsequently, the Petitioners came to know that the 1st respondent adjourned the proceedings and kept pending with him.

3. The learned counsel for the petitioners would further submit that, if the proceedings under Section 107 of Cr.P.C., is initiated, a show cause notice under Section 111 of Cr.P.C., should be issued by the Executive Magistrate, but in the impugned summons no provision has been mentioned, which is clear violation of provision. Further, in the summon, there is no substance of the information in respect of why the petitioners called for enquiry. Moreover, amount of bond, duration of bond as well as nature of sureties, number and character of sureties not mentioned in the summon. Apart from that, absolutely there is no subjective satisfaction mentioned by the 1st respondent.

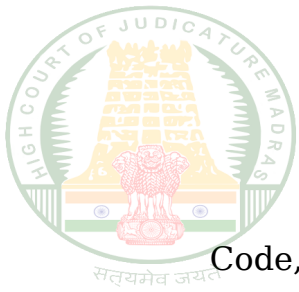
4. The learned counsel further submitted that the impugned notice is vitiated for the violation of the principles of natural justice, as no notice under section 107 Cr.P.C., is issued to the petitioners before issuing the impugned summon. There is no substance of the



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information stating that why the petitioner called for enquiry. In the notice amount of bond, duration of bond as well as nature of sureties, number and character of sureties not mentioned. The mandatory provisions not followed by the respondent before issuing the impugned summons. Absolutely, there is no subjective satisfaction in the impugned summon. The summon is nothing but violation of the provision.

5. On the other hand, Mr.A.Thiruvadikumar, the learned Additional Public Prosecutor appearing for the Respondents would submit that case in Crime No.212/2024 registered at Chinthamanipatti Police Station against the petitioners and others, for the offence under Sections 191(2), 191(3), 296(b), 118(1), 351(3) and 109 BNSS r/w Section 3 of TNPPDL Act, on the complaint of one Govindaraj, a member of the Rural Community, belonging to the “SKM Bakery” shop, located south of Kaniyalampatti in Varavanai village of Kadavur Taluk, Karur District, regarding the incident that occurred on 08.09.2024. In this case, some of the accused were arrested and some of the accused are still absconding. As there is a possibility of law and order problem in the surrounding villages of Taragampatti, Papanampatti, Vepangudi and Kaniyalampatti, action has been taken under Section 126 BNNS of the Criminal Procedure



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Code, as per the letter of the Investigation Agency. Therefore, the impugned notice has been issued by following the procedure, as contemplated and no interference is warranted and thus, prayed for dismissal of the Petition.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. Before going into the facts of the case, it is necessary to refer the relevant provision of the Code regarding the procedures to be followed by the Sub-Divisional Magistrate before initiating proceedings. Section 109 Cr.P.C., which reads as follows:-

“When [an Executive Magistrate] [Substituted by Act 63 of 1980, Section 2, for "a Judicial Magistrate of the first class" (w.e.f. 23-9-1980)] receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate 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 his good



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behaviour for such period, not exceeding one year,
as the Magistrate thinks fit. “

8. Section 111 of the Code of Criminal Procedure reads as follows:-

“When a Magistrate acting under section 107, section 108, section 109, or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth 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.”

9. From the Code extracted above, it is clear that before initiating proceedings, the Magistrate has to pass an order satisfying himself regarding the existence of an apprehension of imminent breach of peace likely to be committed by the petitioner and to prevent such breach of peace or tranquility, he must be asked to execute bond for a particular period to avoid such breach of peace or tranquility in that locality.



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10. No doubt, the Sub-Divisional Magistrate has not considered the necessary facts while passing the impugned order that detailing the nature of information received, the relevant factors, which influenced the mind of the Magistrate to form an opinion that the petitioners are likely to cause imminent breach of peace and public tranquility in a particular place and the probable period during which it is likely to disturb peace or tranquility in a particular locality and in order to prevent the same, it is necessary to take preventive action against them and also the period of bond for good behavior has to be executed etc. Mere extraction of information and citing the crimes against the petitioners and show-causing them to appear before him and why they should not execute the bond without co-relating those informations to the existence of imminent apprehension of peace or tranquility to be committed or anticipated from the petitioners will not be sufficient.

11. The order under [Section 111](#) of Code of Criminal Procedure must contain the nature of information received, the particulars of information mentioned and the information which made the Magistrate to form an opinion regarding the existence of imminent danger of public peace and tranquility which has to be prevented by initiating proceedings against the petitioner invoking



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the power under Section 107 or 109 of Cr.P.C., Just reproducing the words of the Investigating Agency in the show-cause notice alone is not sufficient compliance of passing order under Section 111 of Code of Criminal Procedure and failure to pass such an order will vitiate the entire proceedings and this Court has no hesitation to hold that the the impugned summons is in violation of the provision to Section 128 BNSS Act.

12. In fine, this Criminal Original Petition stands allowed and the proceedings in Na.Ka.No.A3/4446/2024, dated 23.09.2024, on the file of the first respondent, is quashed as against the petitioners. Consequently, the connected miscellaneous petition is closed.

28.01.2025

NCC : Yes/No
Index : Yes / No
Rmk



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- 1.The Sub Divisional Magistrate
cum Sub Collector,
Kuzhithalai, Karur District.
- 2.The Inspector of Police,
Chinthamanipatti Police Station,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR,J.

Rmk

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