

*Crl.O.P.(MD)No.19312 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.19312 of 2024

and

Crl.M.P(MD).No.11915 of 2024

Sureshkannan

Vs.

: Petitioner

1.The Executive Magistrate and Tahsildar,  
Vadipatti Taluk, Madurai District.

2.State rep., by  
The Sub Inspector of Police,  
Solavandhan Police Station,  
Madurai District.  
H3-SDN PS/LIR No.37 of 2024)

: Respondent

**PRAYER** : Criminal Original Petition filed under Section 528 of BNSS, to call for the records relating to the proceedings in Na.Ka.No.100/2024/A4 dated 23.10.2024 on the file of the first respondent and quash the same.

For Petitioner : Mr.S.Vellaichamy

For Respondents : Mr.A.Thiruvadikumar  
Additional Public Prosecutor



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## **ORDER**

Seeking to quash the proceedings in Na.Ka.No.100/2024/A4, dated 23.10.2024, on the file of the first respondent, the Petitioner is before this Court with this present Criminal Original Petition.

2. Mr.S.Vellaichamy, the learned counsel appearing for the petitioner would submit that the petitioner is a resident of Vadipatti Taluk, Madurai District. The petitioner is working in a Private Limited Company viz., "Sathya (Animal) Feeds". On 23.10.2024, the 2<sup>nd</sup> Respondent served the Impugned Show-cause Notice, dated 23.10.2024, issued by the 1<sup>st</sup> Respondent, in which, the 1<sup>st</sup> respondent categorically stated that on 20.10.2024 at about 3.00 p.m., the petitioner was acting to spoil the public peace and tranquility and hence, LIR.No.37/2024, dated 20.10.2024, registered. At the time of occurrence, the petitioner was working in his Company, due to political motive, the petitioner falsely implicated in the case and thereafter, it was forwarded to the 1<sup>st</sup> Respondent for initiating proceedings U/s.128 BNSS Act, which is against the law, since there is no specific allegation against the petitioner about any act to spoil the peaceful and public tranquility.



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3. The learned counsel for the petitioner further submitted that the 1<sup>st</sup> Respondent not stated any reason in his impugned summons, as per the Section 128 of BNSS Act. The 1<sup>st</sup> Respondent failed to follow the procedure before initiating the impugned proceedings against the petitioner. The 1<sup>st</sup> respondent issued summons without any valid reasons for arriving at substantive satisfaction to initiate the proceedings. The mere mentioning of words of subjective satisfaction in the impugned notice without giving any reason is unsustainable in law and same is illegal and abuse of process of law. Hence, the learned counsel prayed for quashing of the impugned order.

4. On the other hand, Mr.A.Thiruvadikumar, the learned Additional Public Prosecutor appearing for the Respondents would submit that the Petitioner disturbed the public and created traffic nuisance on 22.10.2024 at about 3.00 p.m., and hence, the 2<sup>nd</sup> Respondent registered LIR.No.37/2024, dated 20.10.2024 and recommended the 1<sup>st</sup> Respondent to take action against the Petitioner under Section 128 of BNSS Act. Thereafter, the 1<sup>st</sup> Respondent issued show-cause Notice in Na.ka.No.100/2024/A4, dated 23.10.2024 to the petitioner. It is his further submission that the procedure, as contemplated has been followed by the 2<sup>nd</sup>



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Respondent and the 2<sup>nd</sup> Respondent has rightly passed the impugned order, and no interference is warranted and thus, prayed for dismissal of the Petition.

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

6. Before going into the facts of the case, it is necessary to refer the relevant provision of the Code regarding the procedure to be followed by the Executive Magistrate before initiating proceedings. Section 109 Cr.P.C., (128 of BNSS Act) 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. “

7. 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.”

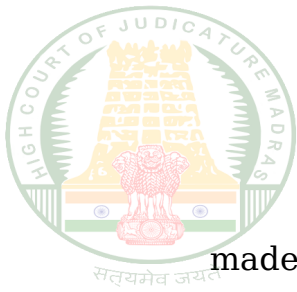
8. From the Code extracted above, it is clear that before initiating proceedings, the Magistrate has to pass an order satisfying himself regarding the existence of an apprehension of imminent breach of peace likely to be committed by the petitioner and to prevent such breach of peace or tranquility, 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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**WEB COPY** 9. Admittedly, in this case, the Petitioner has not involved any other offence earlier and presently he is working in a Private Firm. The Executive Magistrate not considered the necessary facts while passing the impugned order what is the nature of information received, the relevant factors and which influenced the mind of the Magistrate to form an opinion that the petitioner is 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, not provided and found explicit. Mere extraction of information and citing the crimes against the petitioner and show-causing him to appear before him and why he 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 petitioner will not be sufficient.

10. 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



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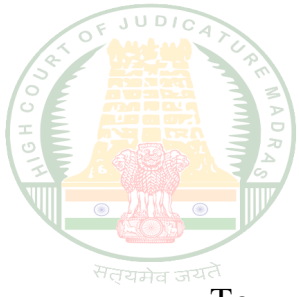
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made the Magistrate to form an opinion regarding the existence of imminent danger of public peace and tranquility which has to be prevented by initiating proceedings against the petitioner invoking the power under Section 107 or 109 of Cr.P.C., Just reproducing the words of the Investigating Agency in the show-cause notice alone is not sufficient, compliance in passing order under Section 111 of Code of Criminal Procedure and failure to pass such reasonable 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.

11. In fine, this Criminal Original Petition stands allowed and the proceedings in Na.Ka.No.100/2024/A4, dated 23.10.2024, on the file of the first respondent, is quashed as against the petitioner. Consequently, the connected miscellaneous petition is closed.

**28.01.2025**

NCC : Yes/No  
Index : Yes / No  
*Rmk*



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To

- 1.The Executive Magistrate and Tahsildar,  
Vadipatti Taluk, Madurai District.
- 2.The Sub Inspector of Police,  
Solavandhan Police Station,  
Madurai District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

**M.NIRMAL KUMAR,J.**



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*Rmk*

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