



CrI.O.P.(MD)No.5603 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.02.2026**

CORAM:

THE HONOURABLE **MRS.JUSTICE L.VICTORIA GOWRI**

CrI.O.P.(MD)No.5603 of 2025
& CrI.M.P.(MD)No.4079 of 2025

Sokkar

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep by the Sub Divisional Magistrate Cum Revenue Divisional Officer,
Uthamapalayam,
Theni District.

2. The Sub Inspector of Police,
Gudalur North Police Station,
Gudalur,
Theni District.

... Respondents

PRAYER : Petition filed under Section 528 of BNSS, 2023 to call for the records of the case in NA.KA No. 1020/2025/A2 on the file of the Sub Divisional Magistrate cum Revenue Divisional Officer, Uthamapalayam, Theni District and quash the same.

For Petitioner : Mr.C.Pradiesh

For Respondents : Mr.M.Sakthi Kumar

Government Advocate (CrI.Side)



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ORDER

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Preface:

This Criminal Original Petition has been filed invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, seeking to quash the summons issued by the respondent Executive Magistrate under Section 109 of the Code of Criminal Procedure /128 of BNSS, 2023 and the consequential proceedings initiated thereunder.

Factual matrix:

2. The petitioner is stated to be a resident within the jurisdiction of the 1st respondent Executive Magistrate. The grievance of the petitioner is with respect to the issuance of summons dated 13.03.2025, calling upon the petitioner to appear before the Executive Magistrate in proceedings purportedly initiated under Section 109 Cr.P.C., 1973.

3. According to the petitioner, the impugned summons is arbitrary, mechanical, and issued without adherence to the mandatory requirements contemplated under Chapter VIII of the Code of Criminal Procedure/Chapter IX of BNSS,2023.



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Case of the petitioner:

4. The learned counsel appearing for the petitioner would submit that the respondent Executive Magistrate has issued the impugned summons without recording any prima facie satisfaction that the petitioner is a habitual offender or that his conduct falls within any of the categories enumerated under Section 110 Cr.P.C., 1973.

5. It is further contended that no material has been disclosed to the petitioner, nor has any prior notice or opportunity been afforded, thereby violating the principles of natural justice. The learned counsel would therefore submit that the continuation of the proceedings would amount to an abuse of process of law and seeks quashing of the summons.

Case of the respondent:

6. The learned Government Advocate (Criminal Side), appearing for the respondents, would submit that the proceedings under Section 109 Cr.P.C., 1973 are preventive in nature and that the petitioner has an efficacious alternative remedy of appearing before the Executive Magistrate and placing his objections. It is contended that the summons issued is only a preliminary step and no final order has yet been passed against the petitioner.



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7. Heard the learned counsels on either side and carefully perused the materials available on record.

Point for consideration:

8. The point that arises for consideration is whether this Court should exercise its inherent jurisdiction under Section 482 Cr.P.C., 1973 to quash the summons issued by the Executive Magistrate under Section 109 Cr.P.C., 1973/128 BNSS,2023 at the threshold?

Analysis:

9. Section 109 of the Code of Criminal Procedure/128 of BNSS,2023 empowers the Executive Magistrate to initiate preventive proceedings against persons who are habitual offenders or whose conduct is such as to pose a threat to public peace and tranquillity. Such proceedings, though preventive, have serious civil consequences and therefore require strict adherence to the statutory safeguards.

10. It is well settled that before initiating proceedings under Section 109 Cr.P.C., 1973/128 BNSS, the Executive Magistrate must arrive at a subjective



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satisfaction based on relevant material and must follow the procedure prescribed under Sections 111 to 116 Cr.P.C., 1973/130 to 135 of BNSS,2023 .

11. At the same time, it is equally settled that a summons issued under Section 109 Cr.P.C., 1973/128 BNSS is only an initial step in the preventive process. The affected person is entitled to appear before the Executive Magistrate, seek copies of materials relied upon, raise objections, and contest the proceedings on merits.

12. This Court, while exercising jurisdiction under Section 482 Cr.P.C., 1973, must be circumspect in interfering with preventive proceedings at the threshold, unless the summons is shown to be ex facie without jurisdiction, patently illegal, or actuated by mala fides.

13. In the case on hand, the impugned summons is only a call to appear before the Executive Magistrate. No final order adverse to the petitioner has yet been passed. The petitioner has an adequate opportunity to raise all factual and legal objections before the Executive Magistrate.



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14. In view of the above, this Court is not inclined to quash the impugned summons at this stage. However, in order to safeguard the rights of the petitioner and to ensure fairness in the proceedings, certain directions are required to be issued.

15. Preventive jurisdiction under Chapter VIII of the Code of Criminal Procedure /IX of BNSS, 2023 is intended to maintain public order and not to harass individuals. Executive Magistrates are expected to exercise such powers with circumspection, fairness, and strict adherence to statutory safeguards.

16. Accordingly, the Criminal Original Petition is disposed of with the following directions:

a.) Liberty is given to the petitioner to appear before the respondent Executive Magistrate on the date fixed or on any subsequent date as may be notified.

b.) The petitioner shall be permitted to raise all objections, both factual and legal, including objections regarding jurisdiction, maintainability, and compliance with Sections 110 to 116 Cr.P.C., 1973/130 to 135 BNSS,2023.

c. The respondent Executive Magistrate shall consider the objections, afford reasonable opportunity of hearing to the petitioner, and pass orders



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strictly in accordance with law, uninfluenced by any observations made in this order.

d. Until such consideration, no coercive steps shall be taken against the petitioner, except in accordance with due process of law. Consequently, the connected Criminal Miscellaneous Petition is closed.

05.02.2026

NCC : Yes / No
Index : Yes / No
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TO:-

1. The Sub Divisional Magistrate Cum Revenue Divisional Officer,
Uthamapalayam,
Theni District.
2. The Sub Inspector of Police,
Gudalur North Police Station,
Gudalur,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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Order made in
CrI.O.P.(MD)No.5603 of 2025

Dated
05.02.2026