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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2026

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CrI.OP.(MD)No.5673 of 2026

and

CrI.M.P.(MD)No.6142 of 2026

Manikandan @ Dinesh Kumar

...Petitioner

Vs

1. The Second Class Executive Magistrate cum Tahsildar,
Ottanchathiram,
Dindigul District.

2. State of Tamilnadu,
Rep by the Sub Inspector of Police,
Oddanchatram Police Station,
Dindigul District.

...Respondents/Complainants

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS Act, 2023, to call for the entire records in relating to the impugned proceedings of the 1st respondent in M.C.No.25/2026/B3 dated 26.02.2026 and quash the same.

For Petitioner

: M/s.M.S.Jeyakarthish

For Respondents

: Mr.A.Albert James
Government Advocate(crl.side)



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ORDER

The present petition has been filed challenging the order passed by the first respondent in M.C.No.25/2026/B3 dated 26.02.2026 wherein the petitioner has been directed to appear in-person for conducting an enquiry under Section 130 of BNS, 2023.

2. A perusal of the impugned summons under Section 130 BNSS, dated 26.02.2026 reveals that the petitioner is an accused in Crime No.156 of 2022 on the file of the Ottanchathiram Police Station. The petitioner is a history sheeter from the year 2022 onwards. Further, it is alleged that on 16.02.2026, L.I.R.No. 46 of 2026 under Section 129 of BNSS has been registered.

3. In view of the above said facts, the petitioner has been called upon to appear in-person before the first respondent on 16.03.2026 for passing orders under Section 130 of BNSS, 2023.

4. According to the learned Counsel appearing for the petitioner, he has not been convicted in any one of the cases as against him. He further submitted that as far as crime No.156 of 2022, is concerned, it has culminated in filing of a



charge sheet in Spl.S.C.No.42 of 2023 on the file of the Special Court for trial cases under SC/ST Act, (PoA) Act, Dindigul, and the same was quashed by this Court on 31.01.2025 in CrI.O.P.(MD)No.2142 of 2025. Therefore, as on today, no criminal case is pending against him. He also relied upon a decision of this Court in CrI.O.P.(MD)No.20725 of 2021, dated 11.01.2022, wherein this Court has held that unless a person falls within the definition of habitual offenders under Section 2(4) of the Tamil Nadu Restriction of Habitual Offenders Act, 1948, the provisions of 110 of Cr.P.C./129 of B.N.S.S. cannot be invoked.

5. Per contra, the learned Government Advocate(crl.side) appearing for the respondents brought to the notice of the Court that the petitioner was convicted in crime No.129 of 2012 and the petitioner being a history sheeter, the provisions of 129 of BNSS, have been invoked.

6. I have considered the submissions made on either side and perused the materials available on record.

7. The Section 2(4) of the Tamil Nadu Restriction of Habitual Offenders Act, 1948 is extracted as follows:-.

“"habitual offender" means a person who, before or after the commencement of this Act, has been sentenced to a



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substantive term of imprisonment, such sentence not having been set aside in appeal or revision, on not less than three occasions, [for any one or more of the scheduled offences] each of the subsequent sentences having been passed in respect of an offence committed after the passing of the sentence on the previous occasion.”

8. Section 129 of BNSS, 2023, is extracted as follows:-

“129. When an Executive Magistrate receives information that there is within his local jurisdiction a person who -

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Bhartiya Nyaya Sanhita, 2023, or under section 176, section 177, section 178 or section 179 of that Sanhita, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely:—



- (a) the Drugs and Cosmetics Act, 1940;*
- (b) the Foreigners Act, 1946;*
- (c) the Employees' Provident Fund and Miscellaneous Provisions Act, 1952;*
- (d) the Essential Commodities Act, 1955;*
- (e) the Protection of Civil Rights Act, 1955;*
- (f) the Customs Act, 1962;*
- (g) the Food Safety and Standards Act, 2006; or*

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or
(g) is so desperate and dangerous to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinksfit."

9. A combined reading of Section 2(4) of the above said Act will clearly indicates that unless a person is a habitual offender as defined under the Tamil Nadu Restriction of Habitual Offenders Act, 1948, proceedings as against him cannot be initiated under Section 129 of BNSS. In the present case, the petitioner, has been convicted in only one case. However, as per the definition in Section 2(4) of the Tamil Nadu Restriction of Habitual Offenders Act, 1948, unless a person is convicted thrice and that too for successive offences, he cannot be considered to be a habitual offender.



10. In the present case, admittedly, the petitioner has been convicted only in a single case. Therefore, the petitioner cannot be considered to be the habitual offender as defined under Section 2(4) of the Tamil Nadu Restriction of Habitual Offenders Act, 1948.

11. In view of the above said deliberations, it is clear that the first respondent cannot invoke Section 129 of BNSS. Therefore, the order impugned in the petition is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is also closed.

23.03.2026

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
RJR

To

1. The Second Class Executive Magistrate cum Tahsildar,
Ottanchathiram,
Dindigul District.

2. The Sub Inspector of Police,
Oddanchatram Police Station,
Dindigul District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

6/7



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R.VIJAYAKUMAR, J.

RJR

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