

Ramesh Vs. The Executive Magistrate and Deputy Commissioner of Police, Tiruppur

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Court : Chennai

Decided On : Sep-08-2016

Judge : P.N. Prakash

Appeal No. : Crl.O.P.No. 18893 of 2016 & Crl.M.P.Nos. 8889 & 8890 of 2016

Appellant : Ramesh

Respondent : The Executive Magistrate and Deputy Commissioner of Police, Tiruppur

Judgement :

(Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the order of the respondent herein under Section 111 of Cr.P.C. dated 11.08.2016 and quash the same.)

1. Challenging the summons issued by the Executive Magistrate u/s 107 r/w 111 Cr.P.C., the petitioner is before this Court.

2. The factual matrix of the case is as under:

2.1 V.Ganesan, the Inspector of Police, No.15 Velampalayam Police Station, Tiruppur, registered a case in Cr.No.441 of 2016 on 21.07.2016 u/s 107 Cr.P.C. and placed the same before the Executive Magistrate and Deputy Commissioner

of Police, Tiruppur City, for initiating action u/s 107 r/w 111 Cr.P.C. against the petitioner herein, pursuant to which the Executive Magistrate issued the impugned summons as aforestated.

2.2 It is averred by the Executive Magistrate that, on 15.07.2016, a dispute arose in Mahalakshmi Nagar which falls within his territorial jurisdiction, between A party and B party with regard to conduct of prayers and as a fall out, there has been breach of peace in the area and there is likelihood of further breach of peace and tranquillity. Therefore, the petitioner has been called upon to appear on 11.08.2016 to show cause as to why he should not furnish a bond for Rs.10,000/- for a period of one year for his keeping good conduct.

3. Mr.G.Karthikeyan, learned counsel for the petitioner submitted that an FIR cannot be registered under Section 107 Cr.P.C., as Section 107 Cr.P.C. is not a substantive penal provision nor is it a cognizable offence. He also submitted that the Executive Magistrate should have conducted a preliminary enquiry regarding the background of the issue and had he done so, he would have been aware of the orders passed by the First Bench of this Court in this regard and he would not have issued the impugned summons. The learned counsel also assailed the impugned summons and the order passed under Section 111 Cr.P.C. on the ground that the order is bereft of details and has given only general information, which is not enough for the petitioner. The learned counsel further submitted that there is a discrepancy in the order, inasmuch as it shows that the Executive Magistrate has signed the order on 08.08.2016, but the order bears the date 11.08.2016, which clearly shows that the Executive Magistrate has not applied his mind. To buttress his contention, he relied upon the following judgments:

1. Ayyavoo Chettair and Others v. Inspector of Police, Ennore and others [CDJ 1984 MHC 490]
2. Kasapparai and others v. State rep. by Inspector of Police, Tiruvottiyur [CDJ 1981 MHC 377]
3. Sandeep Shivaji Mhatre and others v. The State of Maharashtra through Ld.Public Prosecutor, (A.S.) and another

4. Ahammad Kabeer, Kollam vs. State of Kerala, rep by Sub Inspector of Police, Ernakulam and another [CDJ 2014 Ker HC 183].

4. It is true that Section 107 Cr.P.C. does not create substantive penal offence for the purpose of police investigation under Chapter XII of the Code of Criminal Procedure. Nevertheless, a practice has come to stay in Tamil Nadu, whereby, the Station House Officer uses the FIR book for the purpose of sending a report to the Executive Magistrate for the purpose of initiating action u/s 107 Cr.P.C. An FIR book that is supplied by the Government will have printed serial numbers running in seriatim. The police are required to use the FIR book for preparation of the FIRs, and the crime numbers of the Station should be serially entered in the FIR book. These safeguards are provided in order to ensure that the police do not misuse the FIR book for making insertions midway. However, Police Stations have not been provided with any separate stationery for sending reports u/s 107 Cr.P.C. Therefore, the police use the FIR book and assign a crime number to the case, though it is technically a report of the Station House Officer given to the Executive Magistrate for him to take action u/s 107 Cr.P.C. In the absence of any prejudice to the petitioner, this methodology adopted by the police cannot be faulted and therefore, this contention stands rejected.

5. In support of the second contention, the learned counsel for the petitioner relied upon the aforesaid judgments to show that the order u/s 111 Cr.P.C. passed by the Executive Magistrate does not disclose the necessary materials for the petitioner to effectively defend himself. In Kasapparai case [cited supra] and Ayyavoo Chettair case [cited supra], this Court, after going through the orders passed by the Executive Magistrate u/s 111 Cr.P.C. came to the conclusion that the orders were bereft of necessary materials. In Sandeep Shivaji case [cited supra], the issue was that an FIR against the petitioner in that case was registered u/s 323, 324 and 403 r/w 34 IPC and immediately thereafter, the Inspector of Police had given a report that he is likely to commit more such offence, for which there was no basis. In those circumstances, the Bombay High Court quashed the proceedings. Similarly, in Ahammad Kabeer case, the proceedings were quashed on the ground that the order u/s 111 Cr.P.C. did not contain the necessary particulars. From a conspectus of the facts obtaining in all those cases, it is clear

that the High Courts had gone into the individual orders and had rendered a finding that the orders did not disclose the necessary materials for the effective defence of the petitioners therein.

6. In this case, in the order dated 08.08.2016 passed by the Executive Magistrate u/s 111 Cr.P.C., he has stated about the report placed before him by the Inspector of Police, Velampalayam Police Station and also the fact that there is a continuous dispute between two parties with regard to conduct of prayers in Mahalakshmi Nagar area, which is likely to create breach of peace, for which the petitioner was asked to show cause as to why he should not furnish the requisite bond.

7. In the opinion of this Court, the order passed by the Executive Magistrate u/s 111 Cr.P.C. and the consequent summons u/s 107 Cr.P.C is limpid and it cannot be stated that the petitioner has not been made aware via the order the reasons for summoning him. These aspects have been covered by the Full Bench judgment of this Court In Re : Muthuswami Chettiar and others [(1940) 1 MLJ 11] and the statute of law is as follows:

"11. There is no doubt that action taken under Section 112 constitutes a judicial act and therefore the Magistrate should not act arbitrarily. There must be information of a nature which convinces him that there is a likelihood of a breach of the peace. It is impossible to formulate a hard and fast rule with regard to the nature of the information on which a Magistrate should act. What is reasonably sufficient to satisfy a Magistrate must depend on the particular situation. The person who gives the information may not be in a position to give details, but the source of the information may be sufficient to convince the Magistrate that a breach of the peace is likely, and if he is convinced the law requires him to take action. We consider that Knox, J., aptly stated the position in Jaguji Rai v. Emperor(1918) 16 A.L.J. 567, when he said:

As I read this section, there may be cases in which a Magistrate of the first class is merely informed that a person is likely to disturb the public tranquillity without any information being given as to his intent to do wrongful acts. The Magistrate is responsible for the peace of the district. He acts upon this information and he is required to set forth in writing the substance of the information received In this

case we are not told that the Magistrate has received any information of definite acts intended. Apparently from the information he received he was satisfied that the persons concerning whom the information had been given were likely to commit some act which might occasion a breach of the peace. The reason given for this probability was that they were on terms of enmity with each other. Where the Magistrate can go into further particulars, he should certainly go into them. But it may well be that all the information he receives is that there will be a breach of the public peace, and if he considers that information to come from a reliable source, he has jurisdiction to make the order required by Section 112.

12. The High Court has undoubtedly power to quash proceedings where the notice issued does not comply with the requirements of Section 112, but before doing so it must be satisfied that there has been a failure to comply. It must be remembered that the issue of the notice is merely a preliminary step and no order can be passed under Section 107 unless the inquiry which follows the issue of the notice shows that the laying of the information was justified. The High Court can always interfere when the inquiry has not been held in accordance with the law or a wrong conclusion has been arrived at. Far too much stress has been laid in the past on the wording of the notice and too little regard paid to the safeguards provided by the subsequent procedure."

8. The bedrock case on Section 107 Cr.P.C. is *Madhu Limaye and another v. Sub Divisional Magistrate, Monghyr and others* [AIR 1971 S.C.2486], wherein in paragraph 36, it is held as follows:

"36. We have seen the provision of Section 107 that section says that action is to be taken 'in the- manner hereinafter--provided and this ,clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general

public."

9. At this juncture, it may be relevant to clarify here that Section 111 Cr.P.C., 1973 is in pari materia with Section 112 of the 1898 Code and the law laid down In Re : Muthuswami Chettiar case and MadhuLimaye case still holds good. In a case where there is no order under Section 111 Cr.P.C., then, the grievances of the petitioner can be said to be legitimate. If the order passed u/s 111 Cr.P.C. is vague, then also, the benefit of doubt can be given to the petitioner. In this case, there is an order u/s 111 Cr.P.C. and the order does give the petitioner enough material to feed his understanding, otherwise, there is no way by which the petitioner would have taken ground no.' f ', where he states that the First Bench of this Court has passed certain orders in connection with the dispute at hand. If that is so, it is open to the petitioner to appear before the Executive Magistrate and answer to the show cause notice and place before him, the order passed by the First Bench of this Court and have the matter closed. As pointed out by the Full Bench of this Court In Re : Muthuswami Chettiar case, much stress has been laid on the wording of the notice and too little regard paid to the safeguards provided by the subsequent procedure. After all, it is a show cause notice with adequate particulars and it is not an on all and end all of the case. It is the duty of the Executive Magistrate to maintain peace in his locality and even if he has some information sufficient enough to convince him that breach of peace is likely, the law requires him to take action. As pointed out by the Supreme Court in MadhuLimaye case, these are all preventive steps in order to avert a potential danger in the future.

10. As regards the alleged discrepancy in the date, this Court finds none. The date of the order u/s 111 Cr.P.C. is 08.08.2016 and the petitioner has been directed to appear before the Executive Magistrate on 11.08.2016. This Court finds no contradiction or confusion as alleged by the petitioner on this aspect.

In the result, this petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petitions are closed.

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