

(1984) 10 MAD CK 0022

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 3882 of 1983

D. Murugesan and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-10-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111

Citation : (1984) LW(Cri) 283

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Advocate : B. Ramamoorthy, for the Appellant; Kannappa Rajendran, Govt. Advocate (Crl. side), for the Respondent

Judgement

K.M. Natarajan, J.—This petition is filed to quash the proceedings in M.C. No. 184 of 1983 on the file of the Sub Divisional Magistrate, Charanmadevi, Tirunelveli.

2. On information received from the Inspector of Police (Crime), Nanguneri. Tisayanvilai, against 21 persons the Sub Collector and Sub Divisional Magistrate issued show-cause notice u/s 111, Code of Criminal Procedure, and directed the Petitioners to appear before him and show-cause why they should not be required to enter into bonds for a sum of Rs. 1,000 and also give security by the bond with two sureties for like sum for keeping peace for a period of one year.

3. The main grounds on which the proceedings are sought to be quashed are that the learned Magistrate had not applied his judicial mind before passing the said order, that the information does not contain all the necessary details regarding the date, place of occurrence and persons affected, that the ingredients for Section 111, Code of Criminal Procedure, have not been complied with and that, therefore, the order is illegal. It was also contended that Vellayan, the 6th Petitioner herein, is dead and he is not alive for the past five years and that the inclusion of his name as a counter Petitioner clearly shows that the learned Magistrate had not applied his mind.

4. I have gone through the order passed by the learned Magistrate, I find that it does not set forth information in detail and the overt acts against each Petitioner had not been mentioned. The second instance mentioned in the impugned order does not disclose the time and place of occurrence. The third instance does not mention about the place of occurrence or whether any specific complaint had been given against any one of the Petitioners. Instance No. 1 is only against the 18th Petitioner and instance No. 4 is against Petitioners 1, 3, 17, 19 to 21. Instance No. 2 does not mention about any of the Petitioners but it is simply stated that the local Hindus got agitated, shouted against the Tahsildar and pelted stones. Above all except extracting the instances mentioned in the police report, the impugned order does not show that the Magistrate applied his mind and made any preliminary evaluation before issuing the show-cause notice.

5. My attention was drawn by the Petitioner's counsel to the decision in K.V. Shanmugam v. State 1978 L.W. (CrL.) 130. where in Natarajan, J. held as follows: "A study of the several Sections, (Sections 107 to 122, Code of Criminal Procedure) clearly shows that as soon as information is laid before a Magistrate, he has to exercise his Magisterial powers and take action against the person or persons against whom information has been laid. Such action, commencing from the issuing of an order to furnish security u/s 117 or an order of discharge u/s 118, has to be performed in the manner laid by the Code, because the Magistrate exercises at each stage his Magisterial powers under the Code. When the matter is viewed in that perspective, it will be clear that a notice issued u/s 111 has to satisfy a double test. The first is that the notice must furnish all the information which is laid against a person or persons, and secondly before issuing a notice, the Magistrate has to satisfy himself that the situation calls for the issuing of a show cause order. No doubt, Section 112 stipulates that when a person in respect of whom an order is made is present in court, the order shall be read over to him, or if he so desires the substance thereof shall be explained to him. But, this does not mean that the initial notice or order need not contain the substance of the information. What has to be read over or explained to a person u/s 112 can only be the contents of an order u/s 111 and not something which is not incorporated in the said order.

4. A conspectus of the several Sections makes it abundantly clear that even at the outset, a comprehensive order has to be passed, and that order should contain all the details of the information laid against a person or persons. The reason for the Legislature having given such a direction is not far off to see. Anyone, who is directed by an order u/s 111 to appear in court and show cause why proceedings should not be taken against him, should know what is the information laid against him and what sort of repudiation he should make.

The above decision is on all fours applicable to the facts of the instant case. The impugned order does not contain details as required under law, nor is there anything to show that the learned Magistrate has applied his mind or that he had made a preliminary evaluation of the information before issuing the show-cause

order. It is to be noted that the order passed u/s 111 , Code of Criminal Procedure is a judicial order and the Magistrate has to satisfy himself whether the situation calls for the issuing of a show-cause order. on a perusal of the impugned order, I find that the Magistrate has not considered the salient points of law laid down in the above decision; and the proceedings are liable to be quashed on this score alone.

6. My attention was also drawn to the decision in Bahadur Patnaik v. Emperor 1933 M.N.W. 137 where in it was held that the Magistrate should extract and state plainly in such order the facts which, in his opinion, will, if established by evidence, necessitate the taking of security from the counter Petitioners. In Ramaswamy Gounder v. Sub Inspector of Police, Anamalai 1980 L.W. (Crl.) 40. it was held that the Petitioners are entitled to know what case they have to meet before they can be asked to enter their defence and if no details have been given the proceedings have to be quashed.

7. In view of the fact that the proceedings in the instant case are liable to be quashed on the above ground it is needless to traverse the other points raised in the petition.

8. In the result, the petition is allowed and the proceedings in M.C. No. 184 of 1983 on the file of the Sub Collector and Sub Divisional Magistrate, Cheranmahadevi are hereby quashed.