

(2011) 07 MAD CK 0206

In the Madras High Court

Case No : Criminal O.P. (MD) No. 7331 of 2011 and M.P. (MD) No's. 1 and 2 of 2011

G. Paramasivam, Rathinam and Karthick

APPELLANT

Vs

The Sub Divisional Magistrate/Revenue Divisional Officer and
The Inspector of Police

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 170

Citation : (2011) 07 MAD CK 0206

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : R. Suriya Narayanan, for the Appellant; Prabha G.A. Prabha, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The Petitioners herein have come forward to file this petition to quash the proceedings of the 1st Respondent dated 23.05.2011 passed u/s 107 Code of Criminal Procedure

2. It is the case of the Petitioners that against the "A" party to whom also proceedings u/s 107 Code of Criminal Procedure has been initiated, a suit has been filed by the 1st Petitioner in O.S. No. 73 of 2009 on the file of the III Additional Sub-Court, Madurai. The said suit has already been decreed on 31.01.2011. Alleging that the "A" party and their men are disturbing the possession and enjoyment of the suit property of the Petitioners, a complaint was given by them. Instead of taking appropriate action, the 1st Respondent has taken action u/s 107 Code of Criminal Procedure against the Petitioners and hence, the present petition has been filed.

3. The learned Counsel for the Petitioners submitted that the order impugned is liable to be set aside since there is no application of mind. The impugned order does not say anything about the necessity for directing the Petitioners to execute

a bond. There is nothing to indicate in the order impugned, regarding the information received. The learned Counsel has relied upon a judgment of this Hon'ble Court in *Somasundaram and Ors. v. The Revenue Divisional Officer, Dharapuram* and Anr. 2002 MLJ (CrL.) 155.

4. The learned Government Advocate (CrL.side) on instruction submitted that the "A" party has attended enquiry and the Petitioners being "B" party have not attended enquiry.

5. Considering the very same issue, this Hon'ble Court in *Somasundaram and Ors. v. The Revenue Divisional Officer, Dharapuram* and Anr. 2002 MLJ (CrL.) 155 has held as follows:

6. An order passed u/s 111, Code of Criminal Procedure has to satisfy a double test: (1) It must set forth the substance of the information received as well as the amount of the bond to be executed, the terms on which it is to be in force and the number, character and class of sureties (if any required). (2) Besides, the order must also reflect that the Magistrate has assessed the truth of the information and the need for taking action u/s 170, Code of Criminal Procedure for preservation of peace and order. In the present case, as already seen, the order passed u/s 111 Code of Criminal Procedure do not set forth the substance of information received by the Sub-Divisional Magistrate and the nature of the case the Petitioners have to meet before entering appearance. Lack of information in the show cause order has caused prejudice to the Petitioners, since they were not in a position to challenge the same.

7. The Sub-Divisional Magistrate has to satisfy himself about the need to issue a show cause order and the order must reflect the application of mind by the Magistrate to the facts placed before him. The impugned orders do not indicate application of mind by the Magistrate and they do not satisfy the double test much less any one of them and hence they are liable to be quashed.

6. Considering the ratio laid down by this Court and applying the same to the facts on hand, this Court is of the view that the order impugned is liable to be set aside and accordingly the same is set aside. The Criminal original Petition is allowed. Consequently, connected M. Ps. are closed.