
(1976) 10 MAD CK 0006
In the Madras High Court
Case No : Criminal M.P. No. 2897 of 1976

K.V. Shanmugam	Vs	APPELLANT
State (Inspector of Police, Palladam)		RESPONDENT

Date of Decision : 05-10-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 112

Citation : (1978) LW(Cri) 130

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : Maxim A. Lobo, for the Appellant; Sengottian for the Public
Prosecutor on behalf of the State, for the Respondent

Final Decision : Allowed

Judgement

Natarajan, J.—This Criminal Miscellaneous Petition has been filed to quash the proceedings in M.C. No. 1 of 19766 under S. 107,

CrI.P.C. on the file of the Tahsildar-cum Executive Second Class Magistrate, Pollachi.

2. Information having been laid by the Inspector of Police, Palladam against twenty-one persons, the Executive Second Class Magistrate,

Palladam, issued a show cause order under S. 112 of the Code (though actually it should be under S. 111) and directed the counter-petitioners to

appear before him in person on 3rd March 1976 at 11 A.M. and show cause why they should not be ordered under S.107 to execute bonds for

Rs. 2,000/- with two sureties for a like sum each for keeping peace for a period of six months.

3. On behalf of the first counter petitioner, who has moved this Court, Mr. Maxim A. Lobo contends that the order of the Magistrate is not in

accordance with law and hence the proceedings are liable to be quashed. The grounds urged are: (i) the show cause order does not set out the information laid against the counter-petitioners and the grounds on which they were being asked to show cause why an order under S.107 should not be passed against them and (ii) the order does not disclose the Magistrate having applied his mind to the question before the counter petitioners were called on to appear in Court and show cause for proceedings not being taken against them. The show cause order issued by the Magistrate is sought to be sustained by Mr. Sengottian appearing for the Public Prosecutor on the basis the order issued by the Magistrate was only in the nature of a summons or notice and the stage for apprising the counter-petitioners the details of the information laid against them had not been reached and secondly the show cause order need not reflect the objective scrutiny made by the Magistrate of the information laid by the Police Officer before passing an order S. 111 of the Code.

4. For viewing the controversy in the proper perspective, a brief reference to the relevant provisions in the Code of Criminal Procedure is called for. S. 107 is the relevant provision in the Code which empowers a Magistrate to take action against a person or persons against whom information is laid about his or their likelihood of committing breach of peace or disturbance of public tranquility. On receipt of information the Magistrate has to issue an order under S. 111 of the Code. S. 112 prescribes the procedure to be followed in respect of persons present in Court against whom information has been laid for action being taken under S. 107 or S. 108 or S. 109 or S. 110. S.113 empowers the Magistrate to issue a summons or warrant against a person whose presence is required in Court and the Proviso to that Section confers powers on a Magistrate to pass ex parte orders in cases of urgency. S. 114 lays down that whenever a summons or warrant is issued against a person or persons under S. 113 of the Code the summons or warrant should be accompanied by a copy of the order under S. 111 and the copy of the order should be served on the person or persons concerned. After the several formalities have been complied with, the Magistrate has to enquire into the truth of the information under S. 116 of the Code. Lastly, S. 117 provides that if the Magistrate is satisfied about the truth of the information laid against a person or persons, he

may pass an order directing the counter-petitioner or counter-petitioners to give security for keeping the peace or for maintaining good behaviour

as the case may be. If the security ordered for, is not given, the Magistrate has to act under S. 122 of the Code and commit the counter-petitioner

or counter-petitioners to prison for the duration stipulated for keeping the peace.

5. A study of the several Sections 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 under

S. 111 and culminating in the passing of an order to furnish security under S. 117 or an order of discharge under S. 118, has to be performed in

the manner laid down 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 under 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. As regards the first requirement, the words in Sill contain the direction of the Legislature the Magistrate.

The words are as given below:

...he shall make an order in writing, setting forth the substance of the information received....

6. No doubt, S. 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 under S. 112 can only be the contents of an order under S. 111

and not something which is not incorporated in the said order. That the Legislature has not provided for two kinds of orders, viz., a bare or formal

order under S. 111 and a detailed and comprehensive order under S. 112, can be seen from the wording of S. 116 which is in the following terms:

When an order under S. 111 has been read or explained under S. 112....

7. 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 under 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. Burn, J. laid down in *Bahadur Patnaik v.*

Emperor 1933 M.W.N. 137 that a mere reference to a police report in a preliminary order under S. 112, CrI.P.C. will not be sufficient

compliance with the direction of the Legislature and the Magistrate should extract and state plainly in the order the facts which, in his opinion,

would, if established by evidence, necessitate the asking of security from the counter-petitioner. King, J. went a step further and held in

Santhanaramaswami v. Emperor 1937 M.W.N. 189 that an order under S. 112 , CrI.P.C. should not only contain the substance of the information

laid against a counter-petitioner, but even details such as time, place and the identity of the persons alleged to have been threatened should also be

given. In the instant case, the show cause order issued by the Magistrate does not contain the substance of the information laid against the counter-

petitioners, nor details relating to time, place, persons affected, etc. On this ground, the show cause order issued by the Magistrate has to be

struck down as a defective one.

8. The second of the objections raised by the petitioner is also a well founded one. Before issuing an order under S. 111, the Magistrate has to go

through the information received by him against a person or persons and consider whether the issuing of a show cause order it called for, As I have

already stated, the issuing of a show cause order is a Magisterial act and has therefore to be done after the Magistrate has applied his mind to the

question. It is not a case of the Magistrate merely issuing a notice or order on the receipt of the information laid by the police. That is why S. 107,

CrI.P.C. lays down that when information is laid and the Magistrate is of opinion that there is sufficient ground for proceeding, he may require the

person to show cause, etc., etc. There has, therefore, to be necessarily an objective assessment of the truth and urgency of the information laid

before a show cause order can be issued to the person affected by the information. The impugned order does not show that the Magistrate had

made a preliminary evaluation of the information before issuing the show cause order. The contention of Mr. Sengottian that the order need not

contain explicit words to show that the Magistrate had appraised the situation and deemed it fit to issue the show cause order is not a tenable one

and cannot be sustained. There has to be some reference in the show cause order to show that the Magistrate had issued the notice after applying

his mind to the matter and has not issued it merely as a matter of administrative routine,

9. In the result, the Criminal Miscellaneous Petition will stand allowed and the proceedings against the petitioner in M.C. No. 1 of 1976 on the file

of the Tahsildar-cum-Executive Second Class Magistrate, Palladam, will stand quashed.