

(2016) 02 KL CK 0068

In the High Court Of Kerala

Case No : Crl. M.C. Nos. 6476 of 2015, 896, 952 and 968 of 2016

Sujith P.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, Section 111, Section 112, Section 113

Explosive Substances Act, 1908 — Section 3, Section 4, Section 5

Penal Code, 1860 (IPC) — Section 143, Section 147, Section 148, Section 149, Sec

Citation : (2016) CriLJ 2311

Hon'ble Judges : B. Kemal Pasha, J.

Bench : Single Bench

Advocate : I.V. Pramod, Advocate, for the Appellant; Sareena George, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B. Kemal Pasha, J.—1. Petitioners are challenging the orders passed by the learned Sub Divisional Magistrate, Thalassery in MC Nos. 126/2015, 19/2016, 20/2016 and 21/2016. Through the said orders, the learned Sub Divisional Magistrate, Thalassery, has issued preliminary orders under Section 111 Cr.P.C., thereby requiring the petitioners to appear before him and to show cause why they should not be ordered to execute bond for Rs. 50,000/- with two solvent sureties each for the like amount, for keeping peace for a period of one year.

2. According to the learned counsel for the petitioners, the learned Magistrate has violated all the principles laid down by the Apex Court in Madhu Limaye and another v. Sub Divisional Magistrate, Monghyr and others [, AIR 1971 SC 2486] as well as the parameters laid down by the Full Bench of this Court in Moidu v. State of Kerala [, 1982 KLT 578 (FB)]. The learned counsel for the petitioners has invited the attention of this Court to the decision rendered by a learned Single Judge of this Court in Santhosh v. State of Kerala [, 2014 (3) KLT 837] also.

3. Based on the decisions noted *supra*, the learned counsel for the petitioners has argued that the provision under Section 107 Cr.P.C. is not punitive, whereas it is preventive and, therefore, when a person is called upon to answer or to show cause, he should be made aware of the substance of the information allegedly received by the Sub Divisional Magistrate, which enabled him to pass a preliminary order under Section 111 Cr.P.C. It is also argued that the threat allegedly posed by the petitioners should be imminent and the same should not be based on something happened years back.

4. According to the learned counsel for the petitioners, the learned Sub Divisional Magistrate has not given the substance of the information received by him for having a satisfaction that the continued presence of the petitioners in the locality will result in breach of the peace or that they are likely to commit any offences involving public tranquility, in the impugned orders. Over and above it, according to the learned counsel for the petitioners, the reasons for his satisfaction should also reflect in the preliminary order passed under Section 111 Cr.P.C.

5. In *Madhu Limaye* (*supra*), the Apex Court has held in paragraph 37 that:--

"The procedure begins with S. 112. It requires that the Magistrate acting under S. 107 shall make an order in writing, setting forth the substance of the information received, the amount of the bond, the term for which it is to be in force and the number, character and class of sureties (if any) required. Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquility at his hands. Although the section speaks of the "substance of the information" it does not mean the order should not be full. It may not repeat the information bodily but it must give propose notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word "substance" means the essence of the most important parts of the information."

6. In *Moidu* (*supra*), it was held in paragraph 13 that:--

"Regard being bad to the object of S. 107 of the Code and particularly the fact that it is not intended as a punitive action but preventive even where punitive action is taken preventive action may be called for if the character of the information is such that the Magistrate would be justified in acting on such information. As a rule of prudence it may be said that information about events which are the subject matter of pending prosecutions may not by themselves be relied on by the Magistrate as information sufficient to warrant an order under S. 107 of the Code. Ultimately it would be for the Magistrate to consider whether on an overall consideration of the facts available to him by way of information he could form the opinion that the person against whom he was proposing to take action under S. 107 was likely to cause imminent breach of the peace or disturb the public tranquillity. We make it clear that to the extent the decision of this court in *Chirukandath Chandrasekharan v. State of Kerala*, , 1970 KLJ 61 can be

read as prohibiting reliance on such information in categorical terms, we do not agree. As we stated earlier, had it been stated as a rule of prudence or caution we may not have seen reason to disagree with it."

7. Now, the impugned orders passed by the learned Sub Divisional Magistrate have to be considered in order to note down whether it contains the substance of the information received by him and the foundation, which enabled him to pass an order under Section 111 Cr.P.C. In CrI. M.C. No. 6476/2015, the impugned order shows that the learned Magistrate has passed the said order on the basis of the credible information received from the Sub Inspector of Police, Mayyil Police Station, that the counter petitioner residing within the local limits of his jurisdiction is likely to create breach of the peace and disturbance to public tranquility, within the local limits of the jurisdiction of the learned Sub Divisional Magistrate. The learned Sub Divisional Magistrate has noted down that the petitioner is involved in the following crimes within the local limits of the Mayyil Police Station and Chakkarakkal Police Station.

1. Cr. No. 301/15 u/s. 143, 147, 451, 436 r/w 149 IPC.

2. Cr. No. 577/12 u/s. 143, 147, 148, 153, 506(ii) r/w 149 IPC & Sec. 3 & 5 of ES Act.

3. Cr. No. 571/13 u/s. 143, 147, 148, 324, 427, 506(ii) r/w 149 IPC of Chakkarakkal Police Station.

4. Cr. No. 587/15 u/s. 143, 147, 341, 323 r/w 149 IPC.

8. The learned Public Prosecutor has pointed out that the crime noted as serial No. 1 is that of the Mattannur Police Station. At any stretch of imagination, it cannot be said that the petitioner herein is unaware of those crimes registered against him. He cannot be heard to say that crime No. 301/2015 of the Mattannur Police Station registered against him for the offences under Sections 143, 147, 451 and 436 read with Section 149 IPC is not known to him only because of the fact that the name of the Police Station is not noted in the crime. Crime No. 577/2012 is one for the offences under Section 153 IPC as well as Sections 3 and 5 of the Explosive Substances Act, etc. Two crimes are of the year 2015. Therefore, it cannot be said that the apprehension forwarded by the learned Sub Divisional Magistrate is not imminent at least based on those two crimes. When the petitioner is involved in a crime for an offence under Section 436 IPC as well as another crime for the offences under Sections 3 and 5 of the Explosive Substances Act, it cannot be said that there was no reason for a satisfaction on the part of the learned Sub Divisional Magistrate with regard to an imminent threat to the society from the part of the said petitioner. There is no meaning in contending that the substance of the information is not recorded.

9. Learned counsel for the petitioners has invited the attention of this Court to the decision in *Santhosh* (supra) and argued that the order passed by the learned Sub Divisional Magistrate herein is mere the reproduction of the form

contemplated under Section 113 Cr.P.C. I cannot agree with the said argument. Over and above the format, in which the required portions are filled in, the learned Sub Divisional Magistrate has shown the antecedents on the part of the petitioner. The learned Sub Divisional Magistrate is duty bound to pass the order in the format. Over and above it, he should show the grounds for his satisfaction and the substance of the information received. When these much crime numbers in which the petitioners are involved are shown in the orders, the learned Sub Divisional Magistrate cannot be found fault with, by stating that the learned Magistrate has not given the substance of the information or the reason for his satisfaction. The crimes in which the petitioners are involved, especially happened within one year prior to the passing of the order, are the substance of the information, as well as the reasons for his satisfaction.

10. In CrI. M.C. Nos. 896/2016, 952/2016 and 968/2016, the learned Sub Divisional Magistrate has noted that the said persons are accused in Crime Nos. 859/2015 and 862/2015 of the Chakkarakkal Police Station relating to offences under Sections 3 and 5 of the Explosive Substances Act as well as Sections 4 and 5 of the Explosive Substances Act. When the said crime numbers are given by the learned Sub Divisional Magistrate in the said order, by stating that he has got such credible information from the Sub Inspector of Police, Chakkarakkal Police Station, it has to be treated as the substance of the information furnished to the learned Sub Divisional Magistrate by the Sub Inspector of Police, Chakkarakkal. Further, the involvement of those petitioners in the said two crimes, wherein serious offences under the Explosive Substances Act are there, has to be treated as the reason for the satisfaction of the learned Sub Divisional Magistrate in respect of the possibility of the breach of the peace in the locality from the part of the petitioners or the likelihood of the petitioners committing similar offences against public tranquility.

11. In Moidu (supra), there was only a vague statement based on which the learned Sub Divisional Magistrate has attempted to take action that there are frequent disturbances in the area and threat is there as clashes were going on between two rival political groups. It was alleged that there were frequent clashes between RSS workers and the CPI (M) workers and, therefore, such an action was proposed to be taken against some of the persons. In that particular case, it was held that the threat allegedly posed was not specific and there was no reason for any satisfaction that their presence in the locality would result in breach of the peace or that they were likely to involve in any offences against public tranquility.

12. Here, in this particular case, the allegations are not vague. The learned Sub Divisional Magistrate has given the substance of the information received by him by noting down the antecedents on the part of the petitioners. The orders reflect that the learned Magistrate has satisfaction in his mind with regard to the ingredients of the provisions based on the antecedents pointed out to him by the concerned Sub Inspector of Police.

13. On going through these matters, this Court is satisfied that the substance of the credible information received by the learned Sub Divisional Magistrate has been shown in the impugned orders and further, he has shown that he has reason to believe that the continued presence of the petitioners in the locality will result in breach of the peace and that, there is reason for him to believe that they are likely to involve in similar offences against public tranquility.

14. Matters being so, this Court is of the view that there is absolutely nothing to interfere with the orders passed by the learned Sub Divisional Magistrate in these cases. The orders do not call for any interference at all. These Crl. M.Cs. are devoid of merits and are only to be dismissed, and I do so.

In the result, these Crl. M.Cs. are dismissed.