

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945
CRL.MC NO. 3022 OF 2022

PETITIONER/COUNTER PETITIONER :-

VARUN, AGED 38 YEARS
S/O. APPUKUTTAN, SANTHA BHAVAN HOUSE,
VELLARVALLI AMSOM, PUTHUSSERI POIL, THALASSERY TALUK,
KANNUR DISTRICT. - 670673, PIN - 670673
BY ADVS.
AMRITA ARUN
RESHMA E.

RESPONDENTS/PETITIONERS :-

- 1 STATE OF KERALA
STATE OF KERALA, THROUGH STATION HOUSE OFFICER,
PERAVOOR POLICE STATION (CRIME NO.159/2010,141/2022) ,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031
- 2 SUB DIVISIONAL MAGISTRATE, THALASSERY
SUB DIVISIONAL MAGISTRATE COURT,
THALASSERY, KANNUR, PIN - 670101

BY SRI.VIPIN NARAYAN, SR.PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
31.07.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: v

ORDER

This petition is filed by the petitioner challenging the order dated 27.06.2016 passed by the Additional Sessions Judge-I, Thalassery invoking the powers under Section 111 of the Code of Criminal Procedure ("the Code" for the sake of brevity).

2. As per the impugned order issued under Section 107 of the Cr.P.C., the Sub Divisional Magistrate has called upon the petitioner to attend the Court of the Sub Divisional Magistrate on 20.04.2022 at 11 am to show cause why he shall not be ordered to execute a cash bond for Rs.50,000/ (Rupees Fifty thousand Only) with two solvent sureties for the like sum for keeping the peace for a period of one year under Section 107 of the CrPC.

3. Smt.Amrita Arun, the learned counsel appearing for the petitioner, submitted that the order passed by the learned Sub Divisional Magistrate cannot be sustained under law. She pointed out that one of the crimes mentioned in the impugned order is one registered in the year 2010 as Crime No 159 of 2010. She refers to Annexure A2 judgment rendered by the learned Sessions Judge and it is submitted that the petitioner was acquitted of all charges as early as on 27.6.2016. The only other crime is one registered in the year 2022 and that too for a minor offense. The imputation in the order that the petitioner is involving himself in violent activities has no basis, contends the learned counsel. According to the learned counsel, there was

absolutely no material before the learned magistrate to show that there was an imminent danger or that there was a likelihood of disturbance of peace and tranquility in the area. It is urged by the learned counsel that before proceeding to invoke the powers under Section 107 of the Code, the learned Magistrate was bound to consider the materials placed before him and to satisfy himself that there are sufficient grounds for invoking the provision and to call up the individual to execute a bond as contemplated therein for a fixed period. Finally, it is contended that the preliminary order under Section 107 did not meet the requirement of Section 111 of the Code. Reliance is placed on the Full Bench decision of this Court in **Moidu v. State of Kerala**¹ and the decision of the learned Single Judges in **Peethambaran v. State of Kerala**², **Santhosh M.V. and Others v. State of Kerala**³, and **Bejoy K.V. v. State of Kerala**⁴.

4. The learned Public prosecutor, on the other hand, submitted that based on the report received from the Sub Inspector of Police, the Sub Divisional Magistrate was convinced and satisfied that the petitioner herein posed a real threat to public peace and tranquility. Referring to Section 107 of the Code and to its objective, it is submitted that the provision is not intended as a punitive action but a preventive one, and according to him, the learned Magistrate was well justified in acting on such information.

¹ 1982 KHC 139

² 1980 KLT 876

³ 2014 (2) KLD 519

⁴ 2015 (2) KLD 889

5. I have considered the submissions advanced and have perused the records.

6. I find from the materials that the Sub Divisional Magistrate proceeded to invoke powers under Section 107 of the Code on the basis of a report submitted by the DySP Peravoor. One of the crimes mentioned in the impugned order is Crime No 159 of 2010. As rightly submitted by the learned counsel, by Annexure A2 judgement rendered by the learned Sessions Judge, the petitioner stands acquitted of all charges by judgment dated 27.6.2016. The only other crime is one registered in the year 2022 and that crime involves offense under Sections 341 and 506 of the IPC.

7. It would be relevant to have a look at Section 107 of the Code.

"107. Security for keeping the peace in other cases. (1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction."

8. Under Section 107 of the Code, whenever a Magistrate is informed that any person is likely to commit a breach of the peace, he may require

such person to show cause why he should not be ordered to execute a bond with or without sureties, for keeping the peace for a period not exceeding one year. This has to be done in the manner provided in Section 111. That Section requires a Magistrate to make an order in writing, setting forth the substance of the information received. The sine qua non for the institution of a proceeding under the Section is that the Magistrate shall be of the opinion that there is sufficient ground for proceeding. The Magistrate has, under the law, to satisfy himself that a person is likely to commit a breach of the peace or disturb the public tranquility before taking action. For that purpose, the Magistrate, before issuing notice under Section 111, must record the grounds, which, in his opinion, is sufficient for proceeding further.

9. In other words, the provision does not contemplate that the learned Magistrate shall draw up the proceedings automatically whenever information of the kind mentioned in the section is received by the Magistrate. Any action can be initiated only if the Magistrate is satisfied and if he is of the opinion that there are sufficient grounds for proceeding. The Magistrate has to exercise his discretion with reference to the credibility and sufficiency of the information received by him. The prior formation of the opinion by the Magistrate under Section 107 is that which gives him jurisdiction to proceed further under Section 111 of the Code. Though the initiation of the proceedings depends on the Magistrate's subjective satisfaction and in his discretion, there should be cogent materials before him on which a

reasonable opinion for initiating the action could be formed. (See **Peethambaran**)

10. In **Madhu Limaye and another v. SDM, Monghyr**⁵, the Apex Court, in para 36 of the judgment, had cautioned the Executive Magistrate exercising powers under Section 107 in the following manner:-

"We have seen the provisions of Sec. 107. That section says that action is to be taken in the manner here-in-after 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 emphasize 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 general public."

It was further observed in Para 37 as under:-

"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 but it must give proper 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."

11. In the absence of any material rendering a breach of peace probable, a Magistrate is not justified in calling upon the parties to show cause why he should not enter into recognizances and on his failure to make

⁵ AIR 1971 SC 2486

an order under the section (see **Moidu v. State of Kerala**)⁶. It is also not open to the Magistrate to draw up proceedings against persons under Section 107 based on vague hunches or general statements. The impugned orders do not state in what way or with reference to what matter the petitioner was likely to commit a breach of peace. There was no tangible evidence before the learned Magistrate that some definite Act is contemplated, which Act, if committed, is likely to cause a breach of peace. Annexure-1 order does not fulfill the requirement under Section 111 and discloses total non-application of mind.

12. The learned Magistrate ought to have borne in mind that the object of the Section is prevention and not punishment of crimes. It is not intended to punish persons for anything that they have done in the past but to prevent them from doing in future something that might occasion a breach of the peace. The section is designed to enable the Magistrate to take measures with a view to preventing the commission of offenses involving a breach of peace or disturbance of/ public tranquility. Wide powers have been conferred on the magistrates specified in this Section, and as the matter affects the liberty of the subject who has not been found guilty of an offense, it is essential that the power should be exercised strictly in accordance with the law.

As such, in view of such blatant abuse of the powers under Sections 107 and 111 Cr. P.C., it is only just and proper, to secure the interest of

⁶ 1982 KLT 578

justice and to prevent abuse of powers of the Court, that the Annexure-1 order be quashed. The petition is allowed. All further proceedings against the petitioner in M.C.No.35/2022 on the file of the Sub Divisional Magistrate Court, Thalassery, are quashed.

Sd/-

**RAJA VIJAYARAGHAVAN V
JUDGE**

SMA

APPENDIX OF CRL.MC 3022/2022

PETITIONER ANNEXURES :-

Annexure A1	A TRUE COPY OF THE ORDER DATED 14.03.2022 IN M.C.NO.35/2022
Annexure A2	A TRUE COPY OF THE JUDGMENT DATED 27.06.2016 IN SC NO. 255 OF 2011 IN CRIME NO. 159 OF 2010