

**IN THE COURT OF THE V ADDL. DISTRICT AND SESSIONS
JUDGE, D.K. MANGALURU, SITTING AT PUTTUR, D.K.**

Dated: This the 3rd day of August 2019

Present: Sri Rudolph Pereira, B.Com., LL.M.

:: Criminal Revision Petition No.5016/2019 ::

Between: -

Abuthahir,

Aged about 25 years,

S/o. K. Mahammad,

R/at. # 1-16-2-A Kemmara House,

Koila Village & Post,

Puttur Taluk, D.K.

..... **Revision Petitioner**

(By Sri. M.M., Advocate)

/ AND /

1. The Taluk Executive Magistrate
Kadaba, D.K.

2. The PSI Kadaba Police Station,
Represented by Public Prosecutor,
D.K. Mangalore.

..... **Respondents**

(By learned Public Prosecutor)

: ORDERS :

The Revision Petitioner has filed this petition U/Sec.397 and 399 of Cr.P.C., to call for the records pertaining to the proceedings in MCCR No.43/18-19 on the file of 1st respondent and quash the proceedings initiated against the revision petitioner in the interest of justice.

2. Revision Petitioner's case: The Revision Petitioner is the respondent in MCCR No.43/18-19 on the file of 1st respondent. It is alleged that, revision petitioner is indulging in activities of breach of peace and public tranquility in locality which resulted disruption of peace in the locality. The respondent No.1 has initiated proceedings under Section 107, 116(3) of Cr.P.C., against the revision petitioner by issuing a summons straight away to appear before him on 06/03/2019 in person. Hence, being aggrieved by the said summons, he has filed the present petition on following grounds:

The order of the respondent No.1 is not sustainable at law or on facts. He has not followed the mandatory provisions of law before issuing the summons. Without affording an opportunity to him, the respondent No.1 has prejudged the whole issue. The PSI Kadaba police station is having vengeance against the revision petitioner. He has filed a false report in order to trouble the revision petitioner. By blindly believing the report of the PSI, the respondent No.1 has mechanically issued the notice. The respondent No.1 has not conducted independent enquiry for initiating proceedings under Section 107, 116(3) of Cr.P.C. The revision petitioner is innocent and law abiding citizen. He has no

intention to cause breach of public peace in the locality. On these grounds the Revision Petitioner prays to allow the above petition.

3. This Court issued notice to respondent No.1 and 2 and summoned the L.C.R. from the respondent No.1.

4. The Learned Public Prosecutor appeared in this case for respondents.

5. I have heard the arguments on both sides and perused the materials on record and LCR.

6. From the above facts the following points arise for my consideration.

1) Whether the revision petitioner proves that the proceedings initiated by the respondent No.1 u/S.107, 116(3) of Cr.P.C. and consequentially notice issued by the respondent No.1 on 02-03-2019 in MCCR No.43/2018-19 are bad in law and same are liable to be set aside?

2) What order?

7. The following are the findings on the above points:-

Point No. 1 :: In the affirmative

**Point No. 2 :: As per the final order,
for the following:**

: REASONS :

8. **Point No.1:-** The Revision Petitioner is the respondent in MCCR No.43/18-19 on the file of respondent No.1. The respondent No.1 who is the Taluk Executive Magistrate and Tahasildar of Kadaba Taluk has issued the impugned summons dated 02-03-2019 U/S.61 of Cr.P.C., for the proceedings under Sec.107 of Cr.P.C. by directing the petitioner herein to appear before him on 06/03/2019 at 3.00 p.m. The contents of the summons clearly shows that, without any proceedings and recording any reasons, the respondent No.1 has issued summons to the petitioner herein. It is noticed that, except a requisition from the SHO, Kadaba police station, there are no supporting documents by the said reporting officer to show that, the petitioner herein was involved in anti social activities. It appears that, a case in Crime No.107/2014 was registered against petitioner herein on the file of Kadaba police station. However, there is no report to the effect that, the petitioner is involved in similar type of offences after the above said case. It is further alleged that, there are possibilities of committing breach of peace by the petitioner herein during Lok Sabha elections. But there are no materials to show that, during Lok Sabha elections, the petitioner has committed the breach of peace. Therefore, it is very clear that, the reporting police officer has submitted a

report to the respondent No.1 without sufficient materials. Hence, before issuing the impugned summons dated 02/03/2019, the respondent No.1 ought to have held proper enquiry, passed suitable order and complied with the relevant provisions of 107, 111, 114 and 116 of Cr.P.C.

9. The order sheet maintained by the respondent No.1 in LCR shows that, it was written by his subordinate and prior to the issuance of impugned summons no proceedings were recorded or order was passed by the respondent No.1 as required under law.

10. The above particulars show that the respondent No.1 has mechanically conducted the proceedings in question. The above facts clearly shows that, the respondent No.1 has no control over the above proceedings and he has committed procedural and legal irregularities in initiating the impugned proceedings against the petitioner. Under these circumstances, I hold that, the petitioner has made out sufficient grounds to set aside the impugned notice and proceedings initiated by the respondent No.1. Therefore, I record my answer to the above point in the **affirmative**.

11 **Point No.2:-** In the result, I proceed to pass the following:-

:: ORDER ::

The Revision Petition filed under Section 397 and 399 of Cr.P.C. in respect of proceedings initiated by the respondent No.1 in MCCR No.43/18-19 is allowed.

Consequently, the entire proceedings initiated by the respondent No.1 in MCCR No.43/18-19 against the petitioner are set aside.

However, it is clarified that, this order will not come in the way of the respondent No.1, in initiating separate proceedings against the petitioner herein by complying with relevant provisions of Cr.P.C., if situation arises.

Send back the L.C.R.with copy of this order to the respondent No.1.

(Dictated to the stenographer. typed by him corrected and then order pronounced in the open Court on this the 3rd August 2019)

(Rudolph Pereira)

V Addl. District and Sessions Judge,
D.K., Mangaluru, sitting at Puttur, D.K.