

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

Dated: This the 12th day of July 2023

PRESENT

SMT. SARITHA D. BAL., L.L.B.,
V Additional District And Sessions Judge,
D.K., Mangaluru, sitting at Puttur D.K.

:: Criminal Revision Petition No.5054/2022 ::

H.A. Hameed @ Bulet Hameed,
Aged about 52 years,
S/o. Hasanabba,
R/at. Athoor Bailu House,
K C Forms Post, Koila Village,
Kadaba Taluk, D.K. **Revision Petitioner**

(By Sri. Abdul Rahiman, Advocate)

/ AND /

- 1. The Taluk Executive Magistrate,**
Kadaba, D.K.
- 2. The P.S.I.,**
Kadaba Police Station..... **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 proceedings in MCCR No.60/2022-23 on the file of the respondent No.1 and to set aside the said proceedings in the interest of justice.

2. Revision Petitioner's case :-

The Revision Petitioner is the respondent in the impugned proceedings in MCCR No.60/2022-23 on the file of the respondent No.1 herein. The respondent No.1 issued a notice to the revision petitioner on 18/08/2022 in the said proceedings under Section 110(E), 116(3) R/W 111 of Cr.P.C., by directing him to appear on 25/08/2022 at 3.00 p.m., to show cause as to why he should not furnish bond for Rs.1,00,000/- (Rupees one lakh) for keeping peace for a period of one year. Hence, being aggrieved by the said notice, he has filed the present petition on **following grounds:**

GROUND FOR REVISION

The impugned order of the respondent No.1 is incorrect, improper and illegal. The impugned order is without jurisdiction. The impugned order is in a cyclostyle form and there is no prima-facie evidence to disclose as to whom the revision petitioner had done disturbance and in what way the revision petitioner has created nuisance in that locality. The revision petitioner herein was directed to appear on 25/08/2022 at 3.00 p.m., before the respondent No.1. If the impugned order and all the further proceedings are not set aside, the very purpose of revision petition would be rendered infructuous. On these grounds, the

Revision petitioner prays to allow the above petition and to set aside the operation and execution of the impugned order dated 18/08/2022 passed by the respondent No.1 in proceedings No.MCCR No.60/2022-23 in the interest of justice.

3. This Court issued notice to respondents and summoned the Trial Court Records from the respondent No.1.

4. The learned Public Prosecutor has appeared for both respondents.

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

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 under Section 110(E), 116(3) of Cr.P.C. in MCCR No.60/2022-23 are bad in law, hence, 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 records submitted by the respondent No.1 shows that, by apprehending breach of peace from the revision petitioner, the respondent No.2 has submitted a report to the respondent No.1 in PAR Crime No.16/2022 under Section 110(E), 116(3) of Cr.P.C. It is relevant to note that, in the annexed report dated 18/07/2022, the respondent No.2 has referred about the attempt made by the revision petitioner for breach of peace in the locality. But it is significant to note that there is no clear and complete report from the respondent No.2 to show that when exactly the revision petitioner herein has actually committed breach of peace in the locality.

9. Further, the report of the respondent No.2 shows that by apprehending illegal acts from the revision petitioner in the locality and he has also referred about the attempt made by the revision petitioner for alleged breach of peace in the locality, he has submitted report to the respondent No.1 for present

proceedings. Herein, it is relevant to note that, the office of the respondent No.1 has issued show cause notice to the revision petitioner in the impugned proceedings. However before issuing the show cause notice dated 18/08/2022 in the impugned proceedings, the respondent No.1 has not formed any opinion, passed any speaking order, recorded any findings and maintained the proper order sheet and satisfied himself about the truthfulness of allegations made by the respondent No.2. Further, it is noticed that, without following the procedures contemplated under law, the respondent No.1 has initiated the proceedings against the revision petitioner under Section 110(E), 116(3) of Cr.P.C., and straightaway issued the impugned show cause notice.

10. In this case, the report submitted by the respondent No.2 in PAR Crime No.16/2022 to the respondent No.1 show that, the revision petitioner is involved in antisocial activities and there is every possibility of causing breach of peace and loss to private and public property by the revision petitioner. But to substantiate the said allegations, he has not stated in detail about the alleged overt acts of the revision petitioner. It is noticed that the report of respondent No.2 does not show any details about involvement of the revision petitioner in any

overt/anti social activities till the year 2022. Therefore, prima-facie it appears that, his report is baseless and PAR Crime No.16/2022 has been registered by him only for statistical purpose.

11. In **2015(1) KCCR 794 (Sri. Rustom Kerawala V/s State of Karnataka)**, wherein the Hon'ble High Court of Karnataka has held that...

Before passing an order, the Taluk Executive Magistrate has duty bound to pass an order in writing under Section 111 of Cr.P.C., specifically setting forth the substance of information received, the amount of bond to be executed, the term for which it is to be in force and the number, character, class of sureties required to be furnished by the petitioner.

12. Herein, it is unfortunate that without complying with the mandate of law, the respondent No.1 has straight away issued the impugned show cause notice and got it served on the revision petitioner. Further, it is noticed that, in the impugned proceeding dated 25/08/2022, the respondent No.1 has not conducted any court proceedings. The order sheet maintained by respondent No.1 in the impugned proceeding shows that, his sub-ordinate has been conducting the proceedings according to

his whims and fancies. Further, there is no report from the respondent No.2 to show that after August 2022, the revision petitioner has committed or involved in alleged overt acts. Therefore, I am of the view that, the proceedings initiated by the respondent No.1 are bad in law. Hence, the said proceedings and impugned show cause notice issued to the revision petitioner are liable to be set aside as prayed for in the present petition. Hence for the above mentioned reasons, I record my answer to the above point No. 1 in the **affirmative**.

13. **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. is hereby allowed.

Consequently, the proceedings initiated by the respondent No.1 in MCCR No.60/2022-23 against the revision 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 revision

petitioner herein by strictly complying with relevant provisions of Cr.P.C., in the event of arising of situation in future.

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

(Dictated to the stenographer directly on computer, typed by him, corrected by me and then pronounced in the open Court on this the 12th day of July 2023)

(Smt. Saritha D.)

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