



**IN THE COURT OF THE PRL. DISTRICT & SESSIONS
JUDGE AT CHIKKAMAGALURU**

*Present: Smt. Shubha Gowdar, B.A., LL.B
Prl. Dist. & Sessions Judge, Chikkamagaluru.*

Dated this the 8th day of December, 2022

CRIMINAL REV. PETN. No: 146/2022

Petitioners

- 1 Nagaraju S/o. Arjuna, aged 55 years, Aglt., Magundi Village and Post, N.R. Pura Taluk, Chikkamagaluru District.
- 2 Sri. Yogesha, S/o. Nagaraju, aged 47 years, Aglt., Magundi Village and Post, N.R. Pura Taluk, Chikkamagaluru Dist.
- 3 Smt. Ashwini, W/o. Mahendra B.U, aged 47 years, Aglt., R/o. Kemmagere Village, Hosalli Post, Mudigere Taluk, Chikkamagaluru District.

(Rep. by Sri: K B Kiran Kumar, Adv.)

-Vs-

Respondent

*The Taluka Executive Magistrate,
Mudigere Taluk, Mudigere.*

*(Represented by Public Prosecutor,
Chikkamagaluru)*

ORDER

This revision petition under Sec.397 of Cr.P.C has been

preferred by the petitioners challenging the order dt:1.10.2022 passed by the Taluka Executive Magistrate, Mudigere, in MAG Cr.No:110/2022-23.

2. The case of the revision petitioners is as under:

The revision petitioners have received notice dt: 1.10.2022 from respondent- Taluka Executive Magistrate calling upon them to appear before him on 6.10.2022 at 3.00 p.m. as there are allegations against them, under Sec. 107 of Cr.P.C.

3. Being aggrieved by the order of Taluka Executive Magistrate issuing summons, this revision petition has been filed by the petitioners, on the following grounds:

The respondent did not comply with the provisions of Sec. 107 and 111 of Cr.P.C. It is highly illegal. Hence, prays for setting aside the order dt: 1.10.2022.

4. The learned P.P has taken notice . Trial Court records were called and received.

5. Heard both sides. Perused. Posted for orders.

6. *The points that arise for my determination are :*
- (1) *Whether the order of Taluka Executive Magistrate issuing summons to the revision petitioner calls for interference by this Court ?*

(2) *What order?*

7. *My findings on the above points are :*

Point No.1 :In the affirmative

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

REASONS

8. **Point No.1** : *The revision petitioners have filed this revision petition challenging the legality of the order passed by respondent- Taluka Executive Magistrate, calling upon them to appear before him after initiating proceedings under Sec. 107 of Cr.P.C.*

9. *The learned counsel for revision petitioners has argued that the respondent has not passed the order as contemplated under Sec. 111 of Cr.P.C. which is mandate and it is also not in accordance with Sec. 107 of Cr.P.C.*

10. *The learned P.P has argued that proceedings were initiated and issued summons calling upon them to appear before the respondent on 1.10.2022. It is only in order to maintain the law and order and also to prevent disturbance to public tranquility , in case of any violation, the bond amount will be recovered from the petitioners, nothing will happen. Hence, prays for rejection of revision petition.*

11. *On perusal of the records, the respondent Taluka Executive Magistrate passed preliminary order under Sec. 111 of Cr.P.C based on the report submitted by Balur Police that there is a dispute between Nagaraj and Yogish on one side, Mariya and M.P Shivakumar on other side and Ashwini is third group with respect to the land and N.C. No: 93/2021 , G.P No:17/2022, G.P. No: 21/2022 have been registered against the first group, G.P. No: 22/2022 and 31/2022 have been registered against the second group. Based on this report, the respondent has passed*

aforesaid preliminary order.

12. *The provision of Sec. 107 of Cr.P.C provides that when an Executive Magistrate receives the information that any person is likely to commit a breach of public peace or disturb public tranquility and he is of the opinion that there is sufficient ground for proceeding, he may require such person to show cause why he should not be ordered to execute a bond for keeping the peace for such period.*

13. *In the instant case no such show cause notice was ordered to be issued, but only notice was issued to appear before him. The provision of Sec.107 of Cr.P.C has not been followed. Apart from that he has not complied with the mandatory provision of Sec. 111 of Cr.P.C.*

14. *The provision of Sec 111 of Cr.P.C. would speak that when Magistrate acting under Sec. 107 of Cr.P.C. deems it necessary to require any person to show cause under such*

section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed , the term to which it is to be in force and the number of sureties required.

15. As already noted above, the respondent has passed the preliminary order under Sec. 111 of Cr.P.C. by setting forth the substance of the information received, but he has not at all fixed the bond amount and also the term of the bond and also number of sureties. By passing an order under the aforesaid provision, he issued summons calling upon the petitioners to appear before him. That itself would show violation of mandatory provision of Sec. 111 of Cr.P.C. The issuance of summons without complying the mandatory provision vitiates the entire proceedings under Sec. 107 of Cr.P.C. Of-course, he is at liberty to initiate the proceedings by complying with the same. Therefore, summoning order needs to be set aside and consequently, the entire proceedings are to be quashed. Hence, I

hold Point No.1 in the affirmative.

16. **Point No.2** : *For the aforesaid reasons, I proceed to pass the following order:*

ORDER

The revision petition under Sec. 397 Cr.P.C filed by the petitioners is hereby allowed.

The impugned proceedings initiated by the respondent -Taluka Executive Magistrate, Mudigere, in MAG Cr. No:110/2022-23 under Sec. 107 of Cr.P.C are hereby quashed and summoning order dt:1.10.2022 is hereby set aside.

The respondent/Taluka Executive Magistrate is at liberty to initiate the proceedings by complying with the mandatory provisions in Cr.P.C.

Send back trial court records to learned Taluka Executive Magistrate along with copy of this order.

[Dictated to Judgment Writer directly on system, print out corrected and then pronounced by me in open court on this the 8th day of December, 2022]. Sd/-

*(Smt. Shubha Gowdar)
Prl. District & Sessions Judge,
Chikkamagaluru.*

Rag/-