

IN THE COURT OF PRL.SSESSIONS JUDGE: AT RAICHUR

Dated on this the 1st day of April, 2019

PRESENT: Sri. Bailur Shankar Rama,
B.Sc., M.A., LL.B (Special)
Prl. Sessions Judge, Raichur.

CRL.REVISION PETITION No.25/2019

- PETITIONERS : 1) Mallappa S/o Mudayya,
2) Amaresh S/o Hanumanth,
3) Hanumanagouda S/o Yankappa,
4) Earanna S/o Yankappa,
5) Mudukappa S/o Yankappa,
6) Bhimanna S/o Ayyappa,
7) Sharanappa S/o Dodda Rangayya,
8) Yankappa S/o Devappa,
9) Anjineyya S/o Dodda Durgayya,

All are Majors, Occ: Agriculturists, R/o:
Kamaladinni village, Tq: & Dist:
Raichur.

(By Sri. S.Y., Advocate)

-Versus-

RESPONDENTS : State of Karnataka by Taluka
Executive Magistrate, Deodurga.

(By Public Prosecutor, Raichur)

ORDER

Revision petitioners have come up with this petition under Sections 397 & 399 of Cr.P.C. challenging the preliminary order passed by the respondent Taluka Executive Magistrate, Deodurga in MAG/30/2018-19 on the ground that solely based on the report submitted by the PSI of Jalahalli police station requesting him to initiate proceedings that accused are the rowdies in nature, as a precautionary measure in view of the incoming Lok-Saba election of 2019 they may indulged in causing disturbance to the peace and tranquility and to avoid the same requested to Taluka Executive Magistrate to initiate action. Learned Taluka Executive Magistrate passed preliminary order solely based on the said report asking the petitioners to execute self bond for Rs.1,00,000/- each with one surety for like sum for their good behavior for six months which is illegal and unlawful.

2) The brief facts as averred in the petition are that:-

Revision petitioners contend that the proposed action initiated by the Taluka Executive Magistrate, Deodurga without issuing show cause notice before passing the preliminary order and issue of order u/sec 111 of Cr.P.C. Thus, the impugned order is not in accordance with law. No reasons are mentioned

and respondent Taluka Executive Magistrate is asking to furnish bond for Rs.1,00,000/- each with one surety for their good behavior to keep public peace and tranquility in the village is exorbitant high and without basis. No individual notice were given on them. Therefore, the order passed by Taluka Executive Magistrate is totally violative of law and principle of natural justice. It was the result of failing to hold enquiry to his satisfaction and prayed that impugned order passed by the Taluka Executive Magistrate is liable to be quashed.

3) After service of petition notice learned P.P. appeared for the respondent. On looking to the contents of the order under challenge, this Court feels it proper that there is no need to call for lower court records. Heard the arguments.

4) Now, the points that would arise for my consideration are that:

1) Whether the revision petitioners have made out sufficient grounds to set-aside impugned order passed by Taluka Executive Magistrate, Deodurga, in its file MAG/30/2018-19 as sought?

2. What Order?

5) My answers to the above points are as under:

Point No.1: In the “affirmative”.

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

REASONS

Point No.1:-

6) I have gone through the impugned preliminary order passed by Taluka Executive Magistrate, Deodurga, in respect of Crime No.24/2019 of Jalahalli P.S. registered against the petitioners u/sec 107 of Cr.P.C. On reading the impugned order it goes to show that PSI of Jalahalli P.S. have registered a case at Crime No.24/2019 of Gabbur P.S. u/sec 107 of Cr.P.C. and submitted report to the Taluka Executive Magistrate wherein he has requested that the present petitioners against whom action was initiated are rowdies by nature in view of ensuing Lok-Saba election 2019 they may indulge in causing threat to maintain law and order in Kamaladinni village and cause loss to the property to prevent them to indulge in such manner of causing threat to public peace and tranquility and to maintain peace in the village he has lodged a complaint and requested to Taluka Executive Magistrate to initiate proceeding u/sec 107 of Cr.P.C. and submitted FIR. Solely based on the said report Taluka Executive Magistrate by recorded that on going through the facts stated in the FIR he is satisfied that there are chances of creating disturbance to the public peace and tranquility in the

Kamaladinni village and precautionary measure he has passed preliminary order u/sec 111 of Cr.P.C. Here simply on reading the contents of the FIR registered by the PSI of Jalahalli P.S.. Taluka Executive Magistrate recording that he is satisfied about the facts alleged against the accused. Therefore, plain reading of the alleged show cause notice cum preliminary order passed u/sec 111 of Cr.P.C. learned Tahasildar has not made any enquiry for his satisfaction and before passing such preliminary order u/sec 111 of Cr.P.C he has not visiting the spot enquired with the local people about the truth or otherwise of the facts reported by the PSI of Jalahalli P.S. not made any efforts to have personal satisfaction and not given an opportunity to the revision petitioners to submit their say with regard to the allegations complained of, but mechanically a combined order is passed u/sec 111 of Cr.P.C. without following mandatory procedure contemplated under law. Whole thing was done in a single order solely based on the contents of the FIR report of PSI of Jalahalli Police station by recording that on reading the facts he is satisfied. Such initiation of proceeding is totally illegal and unlawful.

7) If we read Section 111 of Cr.P.C. which makes it clear that on being satisfied about the existence of such situation, before proceeding to call upon a person to show cause about the

facts complained of, it is mandatory to pass preliminary order in writing as required by Sec.111 of Cr.P.C. and such an order should set-forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties, if any, required. Therefore, impugned order suffers from serious infirmity, such an order passed by the respondent No.2 Taluka Executive Magistrate, Raichur. based on the FIR registered by the PSI of Netaji Nagar P.S. simply stating that on reading he is convinced in a casual manner vitiates the whole proceedings. No substantive and objective satisfaction which he has made before passing u/sec 111 of Cr.P.C. issue of mandatory show cause notice, calling the revision petitioners to submit their say in their justification was not seen in the impugned order. Therefore, whole process was done without adhering to requirement u/sec 107, 111, 116 of Cr.P.C. and the action sought to be initiated by him itself is defective that was solely based on the FIR submitted by Netaji Nagar Police Station without making any enquiry, issue show cause notice served on the revision petitioners, as such impugned order under challenge is not sustainable and same is liable to be set aside and the facts complained of if any preventive report by the PSI and also impugned order under challenge previous antecedents

of the revision petitioners has not been recorded, whether such cases are registered previously also not stated. Therefore, registering of such cases as a measure of furnish by the police is against the rule of law and it will amount to creating an impression that there is no protection for the citizens in the hands of police and administration. Therefore, before initiating the proceedings police and the Taluka Executive Magistrate must ensure that such action is required to protect the people and also strict adherence to the procedure contained under law is also necessary that is lacking in this case. For all these reasons in the considered view of this court that the impugned order passed by the Taluka Executive Magistrate is liable to be quashed. Accordingly, I answer point No.1 in the Affirmative.

Point No.2:-

8) For the forgoing reasons, I proceed to pass the following:

ORDER

Revision petition filed under Sections 397 & 399 of Cr.P.C. is hereby allowed.

Impugned order under challenge passed by respondent learned Taluka Executive Magistrate

cum Tahsildar, Deodurga in his file MAG/30/ 2018-
19 is hereby set-aside.

(Dictated to the Judgment Writer, transcript corrected and then
pronounced in open court on the 1st day of April, 2019)

(Bailur Shankar Rama)
Prl. District & Sessions Judge,
Raichur.