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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12th DAY OF APRIL 2007

BEFORE :

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

CRIMINAL PETITION No.1490 OF 2007

Between :

1. Sathi Sundaresh
Aged 39 years
S/o Somayya
Member of Zilla Panchayath
J.M. Road, Moodigere.
2. Ravi
Aged 27 years
S/o Shankkara
R/a Balehonnur
Chikkamagalur
Mason.
3. Ramesh
Aged 35 years
S/o Chennappa
R/a Handi Chikamagalur
Coolie.
4. Raju
Aged 32 years
S/o Chennappa Udupa
R/a Chathra Maidan
Moodigere, Coolie.
5. Gopala
Aged 32 years
S/o Appu
R/a Handi, Chikamagalur
Coolie.

6. Lokesh
Aged 30 years
S/o Nandi
R/o Kalpane, Niduvale
Coolie.
7. Shanker
Aged 32 years
S/o Babu
R/a Sathihalli, Aldoor
Coolie.
8. Ponkra
Aged 40 years
S/o Siddu
R/a Machagondana halli
Chikamagalur Taluk
Coolie
9. Mohana
Aged 24 years
Manikya
R/a Ambedkar Nagara
Moodigere, Maison
10. Rafiq
Aged 34 years
S/o Abdul
R/a Krishnapura
Moodigere, Coolie.
11. Venkappa
Aged 44 years
S/o Bhoja
R/a Boothanakadu
Chikamagalur, Coolie
12. Micheal
Aged 29 years
S/o Araldas
R/a Haragodu, Kenjige
Moodigere Taluk, Coolie

13. Girish
Aged 25 years
S/o Budanga
R/a Koove, Moodigere
Coolie
14. Periya Swamy
Aged 30 years
S/o Chinnaswamy
R/a Kudremukh
Moodigere, Coolie
15. Guruvappa
Aged 40 years
S/o Mutha Poojary
R/a Huyilu House
Coolie.
16. Sanjeeva
Aged 24 years
S/o Babu
R/a Koove, Kalpane
Moodigere, Coolie.
17. Nagesh
Aged 26 years
S/o Chandu
R/a Bhuthana Kadu
Chikmagalur, Coolie
18. Shanker
Aged 30 years
S/o Chandu
R/a Bhuthana Kadu
Chikmagalur, Coolie
19. Rajendra Prasad
Aged 36 years
S/o Basave Gowda
R/a Gonibeedu, Moodigere
Painter.

20. Anil
Aged 21 years
S/o Chinniga
R/a Marcal, Baloor
Moodigere, Coolie.
21. Ananda
Aged 23 years
S/o Narayana
R/a Vatekan, Baloor
Moodigere, Coolie.
22. Raju
Aged 48 years
S/o Guruvappa
R/a Haragodu
Near Banahalli
Moodigere, Coolie.
23. Suresh
Aged 35 years
S/o Mani
R/a Indiranagara
Biligula, Moodigere
Coolie.
24. Ananda
Aged 32 years
S/o Chinga Maistri
R/a Niduvale, Baloor
Chikamagalur, Coolie.
25. Jerald
Aged 57 years
S/o Joseph
R/a Muthigepura
Moodigere, Coolie
26. Umesha
Aged 20 years
S/o Venkappa
R/a Boothanakadu
Handi, Chikmagalur
Coolie.

27. Raghu
Aged 19 years
S/o Manjunath
R/a Boothanakadu
Chikamagalur Taluk
Coolie.
28. Chandru
Aged 33 years
S/o Seena
R/a Boothanakadu
Chikamagalur Taluk
Coolie.
29. Devaraj
Aged 25 years
S/o Micheal
R/a Machagondanahalli
Handi, Chikamagalur Taluk
Coolie.
30. Gopala
Aged 24 years
S/o Nataraj
R/a Machagonda Halli
Handi, Chikamagalur Taluk
Coolie.
31. Ravi
Aged 20 years
S/o Veppa
R/a Boothanakadu,
Handi, Chikamagalur
Coolie.
32. S Raju
Aged 26 years
S/o shanthappa
R/a Boothanakadu,
Handi, Chikamagalur
Coolie.

33. Honnayya
Aged 26 years
S/o Chennappa
R/a Boothanakadu,
Handi, Chikamagalur
Coolie.
34. Vijaya
Aged 18 years
S/o Babu
R/a Boothanakadu,
Cholur Handi, Chikamagalur
Coolie.
35. Shankara
Aged 20 years
S/o Saratu
R/a Boothanakadu,
Handi, Chikamagalur
Coolie.
36. Vasu
Aged 30 years
S/o Seena
R/a Gullan Pete, Aldoor
Chikamagalur, Coolie.
37. Chandra
Aged 36 years
S/o Seena
R/a Sathihalli, Aldoor
Chikamagalur, Coolie
38. Vishwa
Aged 19 years
S/o Vasantha
R/a Sathihalli, Aldoor
Chikamagalur, Coolie.
39. Kittu
Aged 26 years
S/o Seena
R/a Sathihalli, Aldoor
Chikamagalur Taluk.

40. Seena
Aged 27 years
S/o Mayala
R/a Banahalli
Moodigere Taluk
Coolie.
41. Raju
Aged 55 years
S/o Chinnayya
R/a Boothanakadu
Chikamagalur Taluk.
42. Guruvappa
Age Major
S/o Kittu
Mahendraban Estate
Moodigere Taluk
Coolie.
43. Vittal
Aged 38 years
S/o Thaniyappa
R/a Bilagula
Moodigere Taluk
Coolie.
44. Shivappa
Aged 38 years
S/o Kuhimma
R/a Boothanakadu
Chikamagalur Taluk
Coolie.
45. Babu B.K.
Aged 40 years
S/o Kinniga
R/a Boothanakadu
Chikamagalur Taluk
Coolie.
46. B Shekhar
Aged 30 years
S/o Babu

R/a Koove, Kalpane
Moodigere Taluk
Coolie.

47. Ananda
Aged 32 years
S/o Ram
R/a Handi
Moodigere Taluk
Coolie.
48. Vijaya
Aged 42 years
S/o Bhasker
R/a Bilagula
Moodigere
Coolie.
49. Deekayya
Aged 45 years
S/o Kunhir Maistri
R/a Marel, Niduvale
Moodigere Taluk
Coolie.
50. Ananda
Aged 34 years
S/o Nagesha
R/a Kalpane Estate
Moodigere Taluk
Coolie.
51. Praveen
Aged 23 years
S/o Raju
R/a Bilagula
Moodigere Taluk
Coolie.
52. Rathish
Aged 30 years
S/o Babu
R/a Aragodu
Moodigere Taluk

Coolie.

53. Akbar
Aged 26 years
S/o Mohammed
R/a Bidarahalli
Moodigere, Coolie.
54. Umesha
Aged 26 years
S/o Vishwanath
R/a Kenjige
Moodigere, Coolie.
55. Raju
Aged 30 years
S/o Thukar
R/a Machagondahalli
Chikamagalur Taluk
Coolie.
56. Jayaram
Aged 35 years
S/o Mariyappa
R/a Boothanakadu
Moodigere, Coolie.
57. Monappa
Aged 26 years
S/o Thukarappa
R/a Asalaru
Machagondanahalli
Moodigere Taluk
Coolie.
58. R Shridhar
Aged 26 years
S/o Ramapoojary
R/a Argodu
Moodigere Taluk
Coolie.

59. Subrahmanya
Aged 31 years
S/o Ayyappa
R/a Bilagula
Moodigere Taluk
Driver

60. Raju
Aged 28 years
S/o Ponkayaraya
R/a Bidarahalli
Moodigere Taluk

61. Chennappa
Aged 40 years
S/o Bhoja
R/a Machagondanahalli
Chikamagalur Taluk.

..Petitioners

(By Sri P.P. Hegde, Adv.)

And :

1. The State
P.S.I. of Moodigere
Police Station
Moodigere.
2. The Taluk Executive Magistrate
Of Moodigere Taluk, Moodigere
Rep by S.P.P.,
High Court of Karnataka
Bangalore.

..Respondents

(By Sri A.V. Ramakrishna, HCGP.)

This Criminal Petition is filed under Section.482 of Cr.P.C. praying to quash the order dated 6-3-2007 passed in proceedings in MAG.2/CR/53-06-07 by the Taluk Executive Magistrate, Moodigere and all further proceedings in the said case.

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This Criminal Petition coming on for admission this day, the Court made the following :

ORDER


Heard Sri P.P.Hegde, learned counsel appearing for the petitioners and Sri A.V.Ramakrishna, learned HCGP appearing for the respondents and perused the material on record.

2. By the impugned order dated 6.3.2007, passed in MAG.2/CR/53/06-07, the Taluka Executive Magistrate, Moodigere Taluk, has directed the police to detain the petitioners in custody from 6.3.2007 to 12.3.2007 and to produce them before him on 12.3.2007.

3. The provisions of Section 107 of Cr.P.C. will have to be invoked by the Executive Magistrate only if he is of the opinion that there is every likelihood of breach of peace. The underlying object of Section 107 of Cr.P.C. is preventive and not penal. The section is designed to enable the Magistrate to take measures with a view to prevent commission of offences involving breach of peace or disturbance of public tranquillity. Wide powers have been conferred on the Magistrates specified in this section and as the matter affects the liberty of an

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individual who has not been found guilty of an offence, it is essential that the power should be exercised strictly in accordance with law as has been held by the Apex Court in the case of **RAM NARAIN SINGH AND OTHERS -vs- STATE OF BIHAR (1973 (1) SUPREME COURT REPORTS 738)**. The provisions of Chapter VIII may be easily made an engine of injustice and oppression and the High Court will exercise closest scrutiny to prevent the same. Section 107 of Cr.P.C. is not intended to afford the police a means of getting hold of a person against whom they cannot foist an offence or to enable them to detain him until they can work out a case against him. Section 107 of Cr.P.C. is mainly intended for persons who are of desperate characters and habitually disturbing the public peace. The proceedings under Section 107 of Cr.P.C. are concerning proper bonds to be taken from the concerned persons by way of security for keeping peace. These proceedings are popularly known as charter proceedings. There is no question of any person being accused of any offence in such proceedings. Definition of the word "offence" as per Section 2(n) of Cr.P.C. shows that the proceedings under



Section 107 of Cr.P.C. cannot have anything to do with any accusation regarding any offence as such. It is also necessary to note that the Executive Magistrate in exercise of his power under Section 107 of Cr.P.C. cannot act as Judicial Magistrate.

4. The impugned order is purported to have been made in exercise of jurisdiction under Section 107 of Cr.P.C. by the Taluka Executive Magistrate. It is most unfortunate that the Taluka Executive Magistrate has totally ignored the provisions of Section 107 and Section 111 of Cr.P.C. before passing the impugned order.

5. The records in this matter would disclose that the petitioners were on strike on 6.3.2007 without prior permission of the concerned with a view to pressurise the local MLA and Health Department to provide infrastructure facilities to the M.G.M. Hospital at Moodigere. They had also demanded that the doctors with specialization should be appointed to the said hospital. As the petitioners had collected in front of the house of the local MLA during midnight of that day, the Sub-Inspector of Police came to the spot and arrested the petitioners by




exercising his jurisdiction under Section 151 of Cr.P.C. The said fact is intimated to the jurisdictional Taluka Executive Magistrate on 6.3.2007 itself by the police. The Taluka Executive Magistrate has passed the impugned order in exercise of his jurisdiction under Section 107 of Cr.P.C. and directed the Sub-Inspector of Police to send the petitioners to judicial custody from 6.3.2007 to 12.3.2007. The said Magistrate further directed that all the petitioners be produced before him at 3.00 p.m. on 12.3.2007.

6. At the outset it should be mentioned that the Taluka Executive Magistrate has not at all passed the order under Section 111 of Cr.P.C., which is mandatory. By passing such order under Section 111 of Cr.P.C., the Executive Magistrate should have required the petitioners to show cause under Section 107 of Cr.P.C. Such order should have been in writing, setting 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. Passing of such preliminary order under Section 111 of Cr.P.C. is *sine qua non* to proceed further. If such an order is not passed, the entire proceedings under Section 107 of Cr.P.C. vitiate. As the Taluka Executive Magistrate has proceeded to detain the petitioners to judicial custody for six days without even passing the preliminary order under Section 111 of Cr.P.C., and without giving any opportunity to the petitioners to show cause as required under law, the proceedings initiated against the petitioners vitiate and the same are liable to be quashed.

7. The first requirement, as aforementioned is that the Magistrate must pass an order under Section 111 of Cr.P.C. Section 112 of Cr.P.C. deals with the procedure when the person is present in the Court. Then the Magistrate must read over the order to the person and if he so desires, the substance of it must be explained to him. When the person is not present in the Court, Section 113 of Cr.P.C. applies. The Magistrate shall then issue summons to him to appear and if he is in custody, the Magistrate shall issue a warrant to the person who has his custody to produce him before the Court. If there



is need for immediate arrest of the person, then, the Magistrate on the report of the Police Officer or upon other information may issue warrant for the arrest of that person. Warrant of arrest can only be issued if there is reason to fear that the breach of peace cannot be prevented except by the arrest of the person. The summons, as well as the warrants issued to the persons will have to be accompanied by the copy of the order passed under Section 111 of Cr.P.C., which means that, the summons and warrant of arrest cannot be issued against any person unless the order under Section 111 of Cr.P.C. is made against such person. The enquiry as to the truth of information will be proceeded with as per the provisions of Section 115 of Cr.P.C. Under sub-section (3) of Section 116 of Cr.P.C., a power has been conferred on the Magistrate to ask for interim bond with or without sureties to keep peace pending completion of the enquiry. This power is used if the Magistrate considers that immediate measures are necessary for the prevention of breach of peace or commission or disturbance of public tranquillity. He does so for reasons to be recorded in writing and if the person does not execute such bond, the



Magistrate is empowered to detain him in custody till the bond is executed or enquiry is concluded. After completion of enquiry, final order would be passed under Section 117 of Cr.P.C.

8. In this matter, as aforementioned, no proceedings under Section 107 of Cr.P.C. were drawn before the arrest of the petitioners. No preliminary order was passed under Section 111 of Cr.P.C. before the detention of the petitioners. The petitioners were arrested first and then taken to the Executive Magistrate with a view to have bond over. Even when the petitioners appeared before the Executive Magistrate, neither the order was passed under Section 111 of Cr.P.C. nor was it read over to the petitioners. The Magistrate had not taken any action to call for the interim bond by the petitioners and had not issued the warrant. Thus, the entire procedure of detaining the petitioners in custody without drawing any order under Section 111 of Cr.P.C. is bad in the eye of law. Without making order under Section 111 of Cr.P.C., and without making any enquiry, neither could the Magistrate order the petitioners to be detained in custody nor require them to



execute a bond with or without surety. As aforementioned, the preliminary requirement to proceed with the provisions of Section 107 of Cr.P.C. is to pass an order under Section 111 of Cr.P.C.

9. Thus, it is clear from the scheme of Chapter VIII that the person, under Section 107 of Cr.P.C., can be arrested only if the Magistrate, under Section.113 of Cr.P.C., based on the report of the police officer or upon other information (the substance of which report or information is to be recorded in writing by the Magistrate) was of the opinion that there is reason to fear the commission of breach of peace and that such breach of peace cannot be prevented otherwise than by immediate arrest of such person, the Magistrate may at any time after passing the order under Section.111 of Cr.P.C., issue warrant of his arrest. Secondly, if a person refuses to execute interim bond as contemplated under Section 116 (3) of Cr.P.C., the person may be detained in custody. Thirdly, if the bond is not executed by a person after full pledged enquiry as per the order of the Executive Magistrate, he may be detained in custody under Section.122 of Cr.P.C.

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As aforementioned, in this matter, the Sub-Inspector of Police in exercise of his power under Section 151 of Cr.P.C. arrested the petitioners. But no person arrested under Section 151(1) of Cr.P.C. could be detained in custody for a period exceeding 24 hours from the time of his arrest unless his further detention was required or authorised under any other provisions of Cr.P.C. or of any other law for time being in force, as is clear from Section 151(2) of Cr.P.C. The petitioners were produced before the Taluka Executive Magistrate within 24 hours of their arrest, ^{but not before Judicial Magistrate.} The detention of the petitioners could not have been continued by the Executive Magistrate either under Section.113 or under Section 116 (3) of Cr.P.C. as the Executive Magistrate has not passed any order under Section 111 of Cr.P.C or under Section.116(3) of Cr.P.C. Applicability of Section 167 of Cr.P.C. is also ruled out before Executive Magistrate. Under these circumstances, the Executive Magistrate had obviously no power, jurisdiction or authority to direct the Sub-Inspector of Police to send the petitioners to custody for six days. Therefore, the order dated 6.3.2007 and

the proceedings in MAG.2/CR/53/06-07, are liable to be quashed. Hence, the following order is made.

The impugned order dated 6.3.2007 passed in MAG.2/CR/53/06-07, pending on the file of Taluka Executive Magistrate, Moodigere, stand quashed. The proceedings are dropped. The copy of this order shall be sent to Taluka Executive Magistrate, Moodigere, for his guidance in future.

Criminal petition is **allowed** accordingly.

Sd/ 
Judge

*bk/bsn