



2023/KER/51536

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 18<sup>TH</sup> DAY OF AUGUST 2023 / 27TH SRAVANA, 1945

CRL.MC NO. 735 OF 2022

M.C.NO.90/2021 OF THE COURT OF THE SUB DIVISIONAL MAGISTRATE,

ADOOR

PETITIONER/COUNTER PETITIONER:

ISMAIL SAHIB



BY ADVS.

M.T.SURESHKUMAR  
SMITHA PHILIPOSE,  
DARSAN SOMANATH  
MANJUSHA K  
SREELAKSHMI SABU

RESPONDENT/STATE:

STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM,  
PIN - 682031

SR PP - RENJITH GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
18.08.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



**"C.R."**

**ORDER**

**Dated this the 18<sup>th</sup> day of August, 2023**

This petition has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred as Cr.P.C. for convenience) to quash Annexure-1 summons dated 22.10.2021 issued by the Sub Divisional Magistrate, Adoor in M.C. No.90 of 2021.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the State.

3. The learned counsel for the petitioner submitted that Annexure-1 summons issued in form No.1 as per Section 61 of Cr.P.C. is not in conformity with the procedure laid down in Section 111 of Cr.P.C. and Section 111 of Cr.P.C. provides the manner in which order under Sections 107, 108, 109 or 110 of Cr.P.C. to be made.

4. According to the learned counsel for the petitioner, on perusal of Annexure-1, non compliance of Section 111 Cr.P.C. is apparent and therefore the order is



perse illegal. Therefore, the quashment as such is liable to be allowed.

5. The learned Public Prosecutor also could not justify the order because the order does not depict the procedure provided under Section 111 of Cr.P.C.

6. The point arises for determination is; how an order to be made under Sections 107, 108, 109 and 110 of Cr.P.C.

7. Section 111 of Cr.P.C. provides as under:

**"111. Order to be made**

*When a Magistrate acting under section 107, section 108, section 109, or section 110, 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 for which it is to be in force, and the number, character and class of sureties (if any), required."*

8. On perusal of Annexure-1 order, it has been stated that the attendance of the petitioner is necessary to



answer a charge under Section 107 of Cr.P.C. and thereby he was directed to appear in person on 26.11.2021. In this context, it is discernible that the order impugned doesn't contain 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, the non-compliance of Section 111 of Cr.P.C. is vivid and the order which doesn't contain the above details cannot sustain in the eye of law.

9. Thus, it is the mandate that whenever a Magistrate intends to proceed acting under section 107, section 108, section 109, or section 110, 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 for which it is to be in force, and the number, character and class of sureties (if any), required and without furnishing such details, the order will be non-est. Therefore, the order is liable to be set aside. Accordingly, Annexure-1 order stands quashed and this



petition stands allowed.

However, it is specifically made clear that quashment of Annexure-1 shall not be a bar for the Sub Divisional Magistrate to issue appropriate order and to proceed under Section 107 of Cr.P.C. following the mode provided under Section 111 of Cr.P.C and as described herein above.

sd/-

**A. BADHARUDEEN  
JUDGE**

SK



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APPENDIX OF CRL.MC 735/2022

**PETITIONER ANNEXURES :**

**ANNEXURE 1                    A TRUE COPY OF THE SUMMONS/NOTICE DATED  
22-10-2021 ISSUED UNDER S 107 CR.PC BY THE  
SDM, ADOOR**

**RESPONDENT'S ANNEXURES : NIL**