

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

Crl.R.C.No.20 of 2016
and Crl.M.P.No.145 of 2016

Kutti @ Pachayappan

... Petitioner

vs.

State Rep. By Inspector of Police,
Vellore South (L & O) Police Station,
Vellore District.

... Respondent

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records on the file of the learned Sub Divisional Magistrate and Revenue Divisional Officer, Vellore, Vellore District in M.C.No.695/2015 dated 15.10.2015.

For Petitioner : Mr.E.Kannadasan
For Respondent : Mr.C.Iyyapparaj,
Govt. Advocate (Crl. Side)

O R D E R

This revision challenges the order of learned Sub Divisional Magistrate and Revenue Divisional Officer, Vellore, Vellore District, passed in M.C.No.695 of 2015, on 15.10.2015.

2. Pursuant to notice under Section 110 Cr.P.C., the petitioner had been directed to execute a bond towards keeping peace in his locality for a period of one year from the date thereof. Petitioner had done so on 15.06.2015. Thereafter, the respondent police had informed the Sub Divisional Magistrate and Revenue Divisional Officer, Vellore, Vellore District, that the petitioner was repeatedly involved in several criminal acts of violation of bond and therefore, ought not to be permitted to remain at large. The respondent police sought action under Section 122 Cr.P.C., towards imprisonment of the petitioner. The Sub Divisional Magistrate and Revenue Divisional Officer, Vellore, Vellore District, observing that immediate measures are needed pending enquiry to prevent breach of public peace, public tranquility and to maintain public protection and safety, directed the detention of the petitioner for a period of one year.

3. This Court on 12.01.2016 had passed an interim direction setting at large the petitioner and the petitioner was released from custody on 14.01.2016. A perusal of the order under challenge informs that the petitioner was issued summons under Section 110 Cr.P.C. In proceedings under Section 110 Cr.P.C., the petitioner, if a habitual offender, could have been required to execute a bond towards securing his good behavior, but the petitioner has been required to execute a bond to keep the peace for a period of one year. Provision therefor is found in Section 107 Cr.P.C and not in Section 110 Cr.P.C. A bare perusal of the order under challenge discloses that though summons had been issued under Section 110 Cr.P.C., there is no reference to involvement of the petitioner in any case prior thereto. It is only when the person is a habitual offender, that proceedings under Section 110 Cr.P.C. can be resorted to. Again, in ordering the detention of the petitioner upon the respondent informing that the petitioner is involved in several criminal activities to the detriment of the public, no summons have been issued to the petitioner towards offering his explanation. This offends the basic natural justice rule of audi alteram partem.

4. This revision shall stand allowed. The interim order dated 12.01.2016 requiring the petitioner to be set at large shall be made absolute. The order is passed without prejudice to the authority concerned to proceed afresh, if situation warrants and strictly in accordance with law. Consequently, connected miscellaneous petition is closed.
vsm

s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Sub Divisional Magistrate
and Revenue Divisional Officer,
Vellore, Vellore District.
2. The Inspector of Police,
Vellore South (L&O) Police Station,
Vellore District.
3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.E.Kannadasan, Advocat SR 4368
kk(co)
prk7/4

Cr1.R.C.No.20 of 2016