

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.844 of 2016
and Crl.MP.6417 of 2016

Madhan @ Manmadhan

.. Petitioner/Accused

Vs.

State rep by Inspector of Police,
R10 MGR Nagar(L&O) Police Station,
Chennai

.. Respondent/Complainant

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 11.05.2016 made in MP.No.4 of 2016 in RC.No.242/SEC PRO/Dc T.Nagar/2016 on the file of the Executive Magistrate cum Deputy Commissioner of Police, T.Nagar, Chennai-17.

For Petitioner : Mr.S.Senthilvel

For Respondent : Mr.M.Mohamed Riyaz, GA (crl.side)

ORDER

The criminal revision petition is directed against the order passed by the Executive Magistrate cum Deputy Commissioner of Police, T.Nagar, Chennai-17 made in MP.No.4 of 2016 in RC.No.242/SEC PRO/DC T.Nagar/2016 dated 11.05.2016.

2.This Court, upon hearing the learned counsel for the petitioner directed the learned Government Advocate (Crl.side) to produce the copy of the Section 107 Cr.PC proceedings passed by the Executive Magistrate before this Court.

3. Pursuant to the order of this Court, the learned Government Advocate (Crl. side) produced the entire original records before this Court. On perusal of the entire records produced by the Inspector of Police, R10 MGR Nagar Police Station, there is no such affidavit filed under Section 107 Cr.PC on or before 11.05.2016. On 10.05.2016 the learned Executive Magistrate cum Deputy Commissioner, T.Nagar, Chennai directed the Superintendent, Central Prison, Puzhal, Chennai to produce the accused viz., Madhan @ Manmadhan before the Court on 11.05.2016. On 11.05.2016, the Executive Magistrate passed order, perusing upon the affidavit filed by the Inspector of

Police and one another witness Parthasarathy.

4. In the order dated 11.05.2016, at Paragraph Nos.6 to 8, the Executive Magistrate-cum-Deputy Commissioner of Police, T.Nagar, Chennai has held as follows :-

"The evidence of the Inspector of Police, Law and Order, R10 MGR Nagar Police Station and of the witness Tr.Parthasarathy were recorded. The Inspector had adduced his evidence in corroboration of the affidavit filed. Witness Tr.Parthasarathy had deposed about the occurrence that took place on 08.05.2016 and his lodging complaint to Police.

It was undoubtedly proved that the accused had breached the condition of the bond under Section 107 Cr.PC executed by him on 08.04.2016 and committed criminal offence punishable under Sections 294(b), 506 (ii) IPC and case in R10 MGR Nagar P.S. Cr.No.779/2016 was registered and he was remanded to judicial custody on 09.05.2016. Therefore the accused is found liable to be committed to the prison for the unexpired period of the bond executed by him under Section 107 Cr.PC.

Hence it is ordered that the accused Madhan @ Manmadhan to be detained in prison as he is already in prison, until the expiry of the period of bond i.e, 6 months deducting the period of his good behaviour of 30 days (08.04.2016 to 07.05.2016) the balance of 150 days from the date of his commitment to the prison."

5. On careful reading of the petition and affidavit under Section 107 Cr.PC, it is seen that the petition is filed on 10.05.2016, the petition and affidavit are signed by the Inspector of Police on 10.05.2016, but it was attested by the Advocate and Commissioner of Oaths, Notary Public only on 13.05.2016, which clearly reveals that at the time of passing orders on 11.05.2016, the affidavit was not at all filed before the Executive Magistrate cum Deputy Commissioner of police, T.Nagar, Chennai.

6. Considering the facts and circumstances of the case, this Court is of the considered view that the order passed by the Executive Magistrate-cum-Deputy Commissioner of Police, T.Nagar, Chennai is without application of mind and without perusing the entire records on file, the petition and affidavit filed by the Inspector of Police, which was signed by the Advocate and Commissioner of Oaths, Notary Public only on 13.05.2016, the order was passed much earlier on 11.05.2016 which is erroneous and liable to be set aside and hence the order dated 11.05.2016

passed by the Executive Magistrate-cum-Deputy Commissioner of Police, T.Nagar, Chennai is hereby set aside.

7.In the result, the criminal Revision is allowed by setting aside the order of conviction dated 11.05.2016 made in MP.No.4 of 2016 in RC.No.242/SEC PRO/DC T.Nagar/2016 on the file of Executive Magistrate cum Deputy Commissioner of Police, T.Nagar, Chennai-17 and the petitioner/accused is acquitted from the charges. The petitioner is directed to be set free, if his detention is not required in connection with any other case and the bail bond, if any, executed by the accused shall stand cancelled. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Inspector of Police
Law and Order R10 MGR Nagar Police Station
Chennai-83

2.The Executive Magistrate cum Deputy Commissioner
of Police, T.Nagar, Chennai-17

3.The XXIII Metropolitan Magistrate
Saidapet

4.The Superintendent
Central Prison,
Puzhal-II Chennai

5.The Public Prosecutor High Court Madras

+1 cc to Mr.S.senthivel Advocate sr.40488

Cr1.R.C.No.844 of 2016

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