

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.10.2016

DELIVERED ON: 02.11.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.20997 of 2016 & Crl.M.P. No.9728 of 2016

Muthu @ Muthuraja

Petitioner

vs.

State by:

1 The Executive Magistrate-cum-
Deputy Superintendent of Police
Pulianthope District
Chennai 600 012

2 The Inspector of Police (Law & Order)
P-5, M.K.B. Nagar Police Station
Chennai

Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to set aside the order passed by the Principal Sessions Judge, Chennai in Crl. R.C. No.74 of 2006 dated 26.08.2016 confirming of the order passed by the first respondent Executive Magistrate-cum-Deputy Commissioner of Police, Pulianthope District, Chennai - 12 in M.P. No.1 of 2016 in Rc.No.628/Sec.Proc./DCP.Pul./2016 dated 01.06.2016 and consequently, set the petitioner at liberty.

For petitioner : Mr. K.S. Suresh

For respondents : Mr. C. Emalias
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 26.08.2016 passed by the Principal Sessions Judge, Chennai in Crl. R.C. No.74 of 2006 confirming the order dated 01.06.2016 passed by the Executive Magistrate-cum-Deputy Commissioner of Police, Pulianthope District, Chennai - 12 in M.P. No.1 of 2016 in Rc.No.628/Sec.Proc./DCP.Pul./2016 and consequently, set the petitioner at liberty.

2 The short point that falls for consideration in this petition is whether the petitioner had executed a bond under Section 107, Cr.P.C. or Section 110, Cr.P.C.

3 From the records produced by the prosecution, it appears that five cases under the Tamil Nadu Prohibition Act were registered against the petitioner, the details of which are as under:

1. P5 Cr. No.83/15 u/s 4(1)(a), 4(1)(i), r/w 4(1-A) TNP Act
2. P5 Cr. No.316/15 u/s 4(1)(a), 4(1)(i), r/w 4(1-A) TNP Act
3. P5 Cr. No.635/15 u/s 4(1)(a), 4(1)(i), r/w 4(1-A) TNP Act
4. P5 Cr. No.399/16 u/s 4(1)(a), 4(1)(i), r/w 4(1-A) TNP Act
5. P5 Cr. No.619/16 u/s 4(1)(a), 4(1)(i), r/w 4(1-A) TNP Act

4 On 06.04.2016, when the petitioner was found to be moving in a very suspicious circumstance, he was rounded up by the police party and a case in Crime No.472 of 2016 under Section 107, Cr.P.C. was registered against him. He was produced before the Executive Magistrate-cum-Deputy Commissioner of Police, before whom, he is said to have executed a bond under Section 107, Cr.P.C. to maintain peace. After his release, on 25.05.2016, he was arrested again in P.5, M.K.B. Nagar P.S. Crime No.619 of 2016 under the provisions of the Tamil Nadu Prohibition Act and in Cr. No.620 of 2016 under Section 294(b), 324 and 506(II) IPC for attacking one Prathap and his brother Prakash. The petitioner was arrested in Cr. Nos.619 and 620 of 2016 and was remanded to judicial custody. While he was in judicial custody, the Inspector of Police filed an application before the Executive Magistrate and Deputy Commissioner of Police for taking suitable action against the petitioner for violation of the bond executed by him under Section 107 Cr.P.C. On the orders of the Executive Magistrate and Deputy Commissioner of Police, the petitioner was produced under PT warrant before him on 01.06.2016. On the same day, the Sub-Inspector of Police, P.5, M.K.B. Nagar Police Station and Prathap, the de facto complainant in Cr. No.620 of 2016 were examined and final orders were passed by the Executive Magistrate and Deputy Commissioner of Police, holding that the petitioner had violated the bond executed under Section 107, Cr.P.C. by indulging himself in the aforesaid two offences and was committed to prison under Section 122 Cr.P.C. on 03.02.2016. Challenging the order passed by the Executive Magistrate-cum-Deputy Commissioner of Police, the petitioner filed Criminal Revision Case No.74 of 2016 before the Principal Sessions Court, Chennai, which was dismissed on 26.08.2016 against which, the petitioner is before this Court under Section 482, Cr.P.C.

5 Though a second revision to the High Court is not maintainable in view of Section 397(3), Cr.P.C., yet, a petition under Section 482, Cr.P.C. can be maintained if it is shown to

the Court that the orders passed by the Courts below are on the face of them, perverse and illegal, causing undue prejudice to the party.

6 The learned counsel for the petitioner submitted that the petitioner had not executed a bond under Section 107, Cr.P.C., but, had executed a bond only under Section 110, Cr.P.C. and therefore, there is no question of he being committed to prison under Section 122, Cr.P.C. for alleged violation of the bond conditions.

7 Per contra, the learned Additional Public Prosecutor submitted that the orders passed by the Courts below are just and legal and as such, warrant no interference.

8 On a perusal of the order dated 26.08.2016 passed by the Principal Sessions Judge, Chennai, it is seen that the following finding has been given in paragraph no.15:

"15. This Court, to find out, whether there is any merit in the said condition, scrutinized the bond executed by the revision petitioner under Form 13. The bond has been executed in a twenty rupees non judicial stamp paper, wherein, the revision petitioner has committed to show good behaviour for a period of one year and he has given an undertaking that he will conduct himself properly with all citizens of India. The contents of the bond appears to be to maintain good behaviour."

9 This Court also perused the bond that is said to have been executed by the petitioner. The said bond has been executed in Form 13 under the Code of Criminal Procedure, which relates to bond for good behaviour under Section 110, Cr.P.C. and it is not a bond under Section 107, Cr.P.C. Therefore, on the basis of the records, it is manifest that the order passed by the two Courts below warrant interference.

Accordingly, the orders of the Courts below are set aside and resultantly, this Criminal Original Petition is allowed. The petitioner is directed to be released forthwith, if not required in any other case.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad

To

1. The Principal Sessions Judge, Chennai-104

2 The Executive Magistrate-cum-
Deputy Superintendent of Police
Pulianthope District
Chennai 600 012

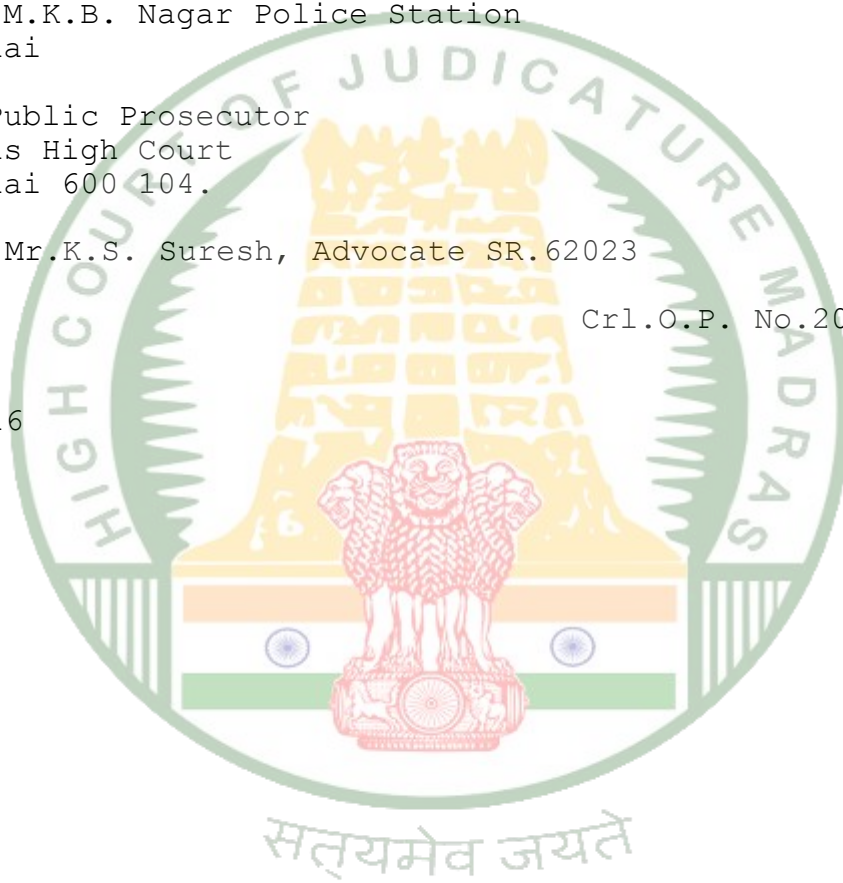
3 The Inspector of Police (Law & Order)
P-5, M.K.B. Nagar Police Station
Chennai

4 The Public Prosecutor
Madras High Court
Chennai 600 104.

+ 1 cc to Mr.K.S. Suresh, Advocate SR.62023

Cr1.O.P. No.20997 of 2016

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