



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.08.2016
CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Crl.O.P.(MD) No.14069 of 2016
and Crl.M.P.(MD) 6572 of 2016

Bala @ Balakrishnan

... Petitioner/Accused

-vs-

1. The Administrative Executive Magistrate,
-cum-Deputy Commissioner,
Administrative Magistrate Court,
Trichy City.
2. The Inspector of Police,
Wooraiyur Police Station,
Trichy District.
3. The Superintendent
Central Prison,
Trichy.

... Respondents/Complainants

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the proceedings issued by the respondent herein in M.C.No.107/Ni Se Na/Thi.Ma/16 dated 18.07.2016 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.B.Jameel Arasu

For Respondents : Mr.K.V.Rajarajan
Govt. Advocate (Crl.Side)

Orders Reserved on	Orders Pronounced on
16.08.2016	18.08.2016

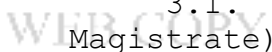
O R D E R

Where the rights of a person, get prejudicially affected, by an order made by an authority, in a proceeding where it involves civil consequences, whether such person is entitled to the predecisional notice / hearing, irrespective of whether the proceeding is judicial, quasi-judicial or administrative in nature, is the issue raised in this case.

2. The petitioner has been ordered to undergo imprisonment till the expiry of the bond executed by him, i.e. till 17.03.2017 by the order of the Executive Magistrate / Deputy Commissioner of Police, Trichy dated 18.07.2016. This order is under challenge in this petition.

Brief Facts:

<https://hcservices.courts.gov.in/hcservices/> The petitioner is the resident of Wooraiyur, Trichy; a case was registered against him in Crime No.664 of 2015 in respect of offence under Section 110 Cr.P.C., (though it is not a section defining any



3.2. On 09.06.2016, another case was registered against the petitioner under Sections 147, 148, 294(b), 324, 506(ii) IPC in Crime No.137 of 2016 on the file of Government Hospital Police Station, Trichy, and in the said case, he was arrested and remanded to custody.

4. Learned counsel for the petitioner assailed the order on the following grounds:

ii) the impugned order has been passed without application of mind;

iv) principles of natural justice not followed

v) the registration of the case in Crime No.137 of 2016 is based on falsehood and even assuming that it is true, it would not lead to the conclusion that the petitioner committed either breach of peace or committed breach of conditions in the bond.

5. Learned Government Advocate (Crl.Side) appearing for the respondents would submit that the order has been passed with competency and concern for natural justice; that the order has been passed after issuing show cause notice which has been duly served upon the petitioner; that the order is fully supported by reasons, i.e. the order has been passed with application of mind and therefore, the order cannot be branded as illegal and thus it cannot be set aside.

"122. Imprisonment in default of security.

<https://hcservices.ecourts.gov.in/hcservices>



already in prison, be detained in prison until such period expires or until within such period- he gives the security to the Court or Magistrate who made the order requiring it.

(b) If any person after having executed a bond without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, **to the satisfaction of such Magistrate or his successor- in- office, to have committed breach of the bond**, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law.

7. From the perusal of records, it is evident that the Executive Magistrate has passed the impugned order without following the principles of natural justice.

8. The order committing the petitioner to the prison proceeds on the footing that the petitioner has, a) involved himself in an offence leading registration of the offences under Indian Penal Code and b) committed the breach of bond.

9. Whether registration of the case under Sections 147, 148, 294 (b), 324, 506(ii) IPC would amount to breach of conditions on the bond is the question. Even assuming that it would amount to breach of undertaking given in the bond, whether the bond can be cancelled unilaterally and whether the petitioner can be imprisoned without hearing him, is yet another question.

10. Learned Government Advocate (Crl.Side) invited the attention of this Court to the proceedings issued by the learned Magistrate dated 16.07.2016 under which, it is stated that as the petitioner is in custody in connection with the case registered in Crime No.137 of 2016, the bond executed by him under Section 117 Cr.P.C., is cancelled. It is further intimated that the petitioner would be subjected to Section 122 (1) (b) of Cr.P.C.

11. This notice has been served upon him, while he was in custody through the Superintendent, Central Prison, Trichy. Whether this would amount to show cause notice or it is a mere information / intimation or communication.

12. Learned Government Advocate (Crl.Side) would also submit that no notice is required to be sent by the respondents, as Section 122 does not contemplate issuance of notice; and that even assuming that notice is contemplated, in the proceedings dated 16.07.2016, the language is couched in such a language that it would amount to constructive notice. From the reading of the notice dated 16.07.2016, it is apparent that it is merely an information. It is relevant to point out that no date of hearing is fixed in the notice and no time limit is indicated before which the petitioner is expected to send his representation as against the proposed proceeding.



12.1. The object of the notice is,

- a) to put forward arguments in their favour
- b) to show cause why proposed action should not be taken
- c) to deny allegations
- d) to produce evidence to rebut allegations or claims
- e) to explain allegations or present an explanation, and/or
- f) to provide mitigating circumstances and other causes

13. Under such circumstances, the contention of the learned Government Advocate (Crl.Side) appearing for the respondents, that the communication dated 16.07.2016 would amount to notice / constructive notice, cannot be accepted.

13.1. Notice is excluded only under the following circumstances;

a) A person should have a notice of any accusation made against him, and this is included in the right to a fair hearing by calling it the right to notice and hearing. Although this is a cardinal rule, a prima facie right to prior notice may be held to be excluded if any of the following factors is present -

i) Where the right to a prior notice would obstruct the taking of prompt action, such a right can be excluded. [***Anderton v. Kinnard (1986) RTR 11 DC; R. v. Bott (1968) 1 All ER 1119; (1968) 1 WLR 583***].

ii) If again the matter is so urgent that an order should be made forthwith, as in the case of interim injunction or a stay of execution, the court will make the order straightway without insisting upon issuance of notice [***Pearlberg v. Varty (Inspector of Taxes) (1971) 1 WLR 728 (CA); (1971) 2 All ER 552 (CA)***].

iii) The right to issue notice is excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. [***Union of India v. Tulsiram Patel AIR 1985 SC 1416; (1985) 3 SCC 398***]

14. The learned Government Advocate (Crl.Side) appearing for the respondents has relied upon the decision of this Court in the case of **Murali @ Ponnuchamy vs. The Sub Divisional Executive Magistrate and Assistant Collector, Sivakasi, Virudhunagar District (Crl.R.C. (MD) 161 of 2016)**, decided on 09.06.2016, in which it has been held that the Executive Magistrate need not write an elaborate judgment. This decision does not exonerate the Executive Magistrate from giving reasons, but it only directs that reasons recorded may be brief. The complete reading of Paragraph 13 of the order would go to show that briefly recording the grounds upon which learned Executive Magistrate derived satisfaction is material.

"13.Now, in the case before us, the detention order has been passed by the first respondent under Section 122(1)(b) Cr.P.C. As per the said provision, the Executive Magistrate, before ordering a person to be jailed, he shall be satisfied that the person has breached the bond conditions, the Executive Magistrate must also record the grounds for such proof. That

https://hcservices.mca.gov.in/hcservices must apply his mind and pass orders. He cannot pass orders mechanically. But, he need not write an elaborate Judgment like us. His Orders must show atleast briefly the



grounds upon which, he has satisfied that the person has breached the bond executed by him. Under Section 122(1)(b) Cr.P.C., if the said satisfaction is not recorded, it will be presumed that the detention authority sending a person to jail is arbitrary, mechanical, not fair, unjust. The detention order must disclose the grounds of proof, otherwise, Court cannot see what has transpired in the mind of the Executive Magistrate in passing the detention order, more particularly, when these orders are revisable by the Sessions Judges."

15. Per contra, learned counsel for the petitioner contented that the order has been passed without following the principles of natural justice and is liable to be set aside.

16. The Law Commission, in its Fourteenth Report relating to Reform in Judicial Administration, recommended that in the case of administrative decisions, provision should be made that they should be accompanied by reasons. The reasons will make it possible to test the validity of these decisions by the machinery of appropriate writs.

16.1. No law has been enacted pursuant to the recommendation of the Law Commission imposing a general duty to record reasons for its decision by an administrative authority though the requirement to give reasons is found in some statutes.

16.2. The learned counsel for the petitioner contended that even in the administrative order, which involves civil consequences, it must be made in consistent with the principles of natural justice and that as the order has been passed without following the same it is liable to set aside. It is appropriate to quote the decision in the case of **State Of Orissa vs Dr. (Miss) Binapani Dei & Ors.**, reported in AIR 1967 SC 1269, as under:

"...It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence.

16.3. What is the meaning of civil consequence in the decision reported in the case of **Mohinder Singh Gill & Anr vs The Chief Election Commissioner, reported in (1978 AIR 851)**, wherein it has been held as under:

"....But what is a civil consequence, let us ask ourselves,; by passing verbal boobytraps ? 'Civil consequence' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence. Civil is defined by Black (Law Dictionary 4th Edn.) at p. 311.

"Ordinally, pertaining or appropriate to a member of a civitas of free political community; natural or proper to a citizen.



Also, relating to the community, or to the policy and government of the citizens and subjects of a state.

The word is derived from the Latin *civilis*, a citizen. In law, it has various significations."

'Civil Rights' are such as belong to every citizen of the State or country, or, in a wider sense, to all its inhabitants, and are not connected with the organisation or administration of government. They include the rights of property, marriage protection by the laws, freedom of contract, trial by jury, etc. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action.

16.4. The contention of the learned counsel for the respondents that Section 122 Cr.P.C., did not provide for issuance of notice and therefore, no notice is necessary is answered in the case of **Maneka Gandhi vs Union Of India**, reported in **1978 AIR 597**, wherein it has been held as under:

"..... even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in *Cooper v. Wandsworth Board of Works*. "A long course of decision---, beginning with *Dr. Bentley's* case and ending with some very recent cases, establish that, although there are no positive words in the statute requiring that the party shall be heard, yet-the justice of the common law will supply the omission of the legislature". The principle of *audi alteram partem*, which mandates that no one shall be condemned unheard, part of the rules of natural justice.

17. Oliver Wendell Holmes observed: "We fear to grant power and are unwilling to recognize it when it exists". Discretion being an element in all power, any arbitrary exercise thereof has always been frowned upon and disdained by courts as breach of natural justice.

18. From the legal position discussed above, it is clear that the impugned order passed without following the principles of natural justice is liable to be set aside.

19. Accordingly, this Criminal Original Petition is allowed and the impugned proceedings issued by the 1st respondent herein in M.C.No.107/Ni Se Na/Thi.Ma/16 dated 18.07.2016 is hereby set aside. Consequently, CrI.M.P.(MD) 6572 of 2016 is also allowed and the 3rd respondent is directed to release the petitioner forthwith.

Sd/
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar



To:

1. The Administrative Executive Magistrate,
-cum-Deputy Commissioner,
Administrative Magistrate Court,
Trichy City.
2. The Inspector of Police,
Wooraiyur Police Station,
Trichy District.
3. The Superintendent
Central Prison,
Trichy.
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.B.Jameel Arasu, Advocate in SR.No.45567

PRE-DELIVERY ORDER IN
Crl.O.P.(MD) No.14069 of 2016
and Crl.M.P.(MD) 6572 of 2016
18.08.2016

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PA/SK-SKN/SAR(W)/19.08.2016/7P/6C (IT)