

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Crl.RC.No.723 of 2017
and Crl.M.P.No.6806 of 2017

Santhosh @ Santhoshkumar .. Petitioner

Vs.

1. The First Class Executive Magistrate,
And Revenue Divisional Officer,
Udumalpet, Tiruppur District.

2. The Inspector of Police,
Udumalpet Police Station,
Udumalpet, Tiruppur District.

.. Respondents

PRAYER : Criminal Revision Petition filed under Section 397(1) & 401 of Cr.P.C., to call for the entire records in connection with the M.C.02/2017/A2 on the file of the First Class Executive Magistrate and Revenue Divisional Officer, Udumalpet and set aside the order passed by the Learned First Class Executive Magistrate and Revenue Divisional Officer, Udumalpet, dated 06.05.2017 in M.C.02/2017/A2.

For Petitioner : Mr.V.Parthiban

For Respondents : Mr.R.Sekar,
Govt. Advocate (Criminal side)

ORDER

This Revision has been filed against the order passed by the 1st respondent Executive Magistrate in his order in M.C.02/2017/A2 dated 06.05.2017. According to the 1st respondent the petitioner was already involved in many crimes, because of which charge sheet has already been laid against him before the concerned Court. Therefore, the second respondent seems to have made a request to the 1st respondent to invoke Section 110 of the Code of Criminal Procedure (herein after referred to as "the Code"), for the purpose of security for good behaviour from the petitioner.

2. Pursuant to the said request, the petitioner executed a bond under Section 110 of the Code, on 08.02.2017 for a period of two years commencing from 08.02.2017 till 07.02.2019. Though the said bond has been executed by the petitioner, according to the 2nd respondent, within the period of the said bond, the petitioner, in violation of the bond condition, had involved in crimes, and he has been booked under Section 151 of the Code and section 7 (1) (a) of Criminal Law Amendment Act in Crime No.71 of 2017 and also, he has been booked under Section 386 of IPC and also under Section 4 of the Tamil Nadu Prohibition of Harassment

of Woman Act in Crime No.106 of 2017 on the file of the 2nd respondent.

3. Based on this crime in which, said to have been involved by the petitioner, the 2nd respondent had requested the 1st respondent to proceed further by invoking section 122 of the Code. Accordingly, notice had been given to the petitioner, who has already been in jail pursuant to the crime he had involved, and as per notice, which was served on the petitioner on 09.03.2017 and 05.04.2017, the petitioner had appeared before the 1st respondent on 06.05.2017. The 1st respondent claims to have conducted an enquiry about the violation of bond condition on the part of the petitioner and involvement of criminal cases during the bond period. However, the petitioner had denied those involvement.

4. After having enquired the petitioner, by giving a chance to make his submissions on the proposed invocation of Section 122 (1) (b) of the Code, the 1st respondent has passed the present impugned order, invoking Section 122 (1) (b) of the Code by cancelling the said bond executed by the petitioner on 08.02.2017, and he has been directed to be imprisoned during the bond period that is up to 07.02.2019. Challenging the said order issued by the 1st respondent, dated 06.05.2017, the present revision has been preferred by the petitioner.

5. I have heard Mr.V.Paarthiban learned counsel appearing for the petitioner. The learned counsel would submit that, the very invocation of Section 110 of the Code itself is bad. Insofar as the case of the petitioner is concerned, there were no necessity to invoke Section 110 of the Code, since the petitioner had not involved in criminal case, for such invocation.

6. In this regard, the learned counsel for the petitioner has invited the attention of this Court in Section 110 of the Criminal Procedure Code where the Sub Section "f" would state that if the person is a habitual offender, or he is habitually attempts to commit any offence, then only, the invocation of Section 110 would be made possible. In that case, the materials placed by the 2nd respondent to the 1st respondent for invocation of Section 110 insofar as the petitioner is concerned, is not in consonance with the ingredients of Section 110 of the Code, as the petitioner had never been a habitual offender.

7. The learned counsel would also submit that since the very invocation of section 110 itself is bad in law or is not required, insofar as the petitioner is concerned, as he is not a habitual offender, the subsequent proceedings and invocation of section 122 (1) (b) of the

Code to state that the petitioner had violated the bond conditions during the bond period, would also be equally unlawful and therefore, the final order which is impugned herein, is, for the said reason, vitiated.

8. The learned counsel for the petitioner would also submit that except the FIR filed to invoke Section 110 of the Code, which had been shown as the base for invocation of the sub section, no other offence has been shown to be committed or allegedly involved by the petitioner prior to the invocation of section 110 of the Code. Therefore, the learned counsel would say that the FIR under section 110 of the Code may not be a base material for the invocation of section 110, based on which, the consequential proceedings issued under section 122 (1) (b) of the Code cannot be a justifiable one. Therefore, the learned counsel would submit that the impugned order is liable to be set aside.

9. Per contra, Mr.R.Sekar, learned Government Advocate (Criminal side) appearing for the respondents has filed a status report from the 2nd respondent wherein the 2nd respondent has given details about the involvement of the petitioner in crimes at various points of time for which, proceedings were initiated and most of them are pending investigation/trial. In this regard, the following paragraphs of the status report of the second respondent dated 21.07.2017 can be usefully extracted here under:

"I submit that the petitioner/accused filed the present revision petition challenging the order of 06.05.2017 passed by 1st respondent vide his proc.No.M.C.02/2017/A2 seeking to set aside the same. When the above matter came up for hearing on today, i.e. 21.07.2017 before this Hon'ble High Court, it was directed me to file a status report.

I submit that the petitioner/accused is accused in two Crime Nos. belong to Udumalpet PS., which are mentioned below:

i)Crime No.106/2017- under section 386 IPC r/w 4 of Tamilnadu Prohibition of Women Harrassment Act @ 394, r/w 397 IPC & 4 of Tamilnadu Prohibition of Women Harrassment Act on 27.02.2017.

After completion of the investigation, on 01.06.2017 the case was charge sheeted before the Judicial Magistrate No.I, Udumalpet. But, the said court has not taken on file.

ii)Crime No.71/2017- under section 7 (1) (a) CLA Act.

After completion of the investigation, on 12.02.2017, the case was charge sheeted before the Judicial Magistrate No.I, Udumalpet, vide C.C.No.243/2017, dated 13.07.2017.

I submit that apart from the above cases, the petitioner/accused further facing the cases as stated below:

S.No .	Station with Crime No.	Section of Law	Stage of the case
1.	Udumalpet PS., Crime No.769/2012	294(b), 506 (ii) IPC	Pending Trial
2.	Udumalpet PS., Crime No.244/2012	294(b), 4(i) (J) TNP Act	Pending Trial
3.	Singanallur PS., Crime No.80/2014	392 IPC (CBE City)	Pending Trial
4.	Singanallur PS., Crime No.253/2014	392 IPC (CBE City)	Pending Trial
5.	Udumalpet PS., Crime No.277/2014	387 IPC	
6.	Singanallur PS., Crime No.361/2014	392 IPC (CBE City)	Pending Trial
7.	Udumalpet PS., Crime No.102/2015	307 IPC	Pending Trial
8.	Udumalpet PS., Crime No.481/2015	120(b), 147, 148, 307, 302 IPC	Pending Trial
9.	Udumalpet PS., Crime No.744/2015	294(b), 506(ii) & 3 of TNPPDL Act	Pending Trial
10.	Udumalpet PS., Crime No.910/2015	294(b), 324, 506(ii) IPC	Pending Trial
11.	Udumalpet PS., Crime No.230/2016	397 IPC	Pending Trial
12.	Udumalpet PS., Crime No.555/2016	107 Cr.P.C.,	Pending Trial
13.	Udumalpet PS., Crime No.27/2017	110 Cr.P.C.,	Convicted

Further the petitioner/accused is a history sheeted rowdy vide H.S.No.822/2015 maintained by Udumalpet PS.,"

10. By quoting the said averments made in the status report, the learned Government Advocate (Criminal Side) would submit that these catalogue of cases filed or pending against the petitioner would clearly establish that the petitioner is a habitual offender, based on which, the 2nd respondent has got every justification to invoke section 110 of the Code.

11. The learned Government Advocate (Criminal side) would also submit that even after he had executed the bond under section 110 of the Code, during the bond period, since he has violated the same by involving in at least two cases where FIR has been filed against him, as seen from the status report, there was a necessity for the 2nd respondent to make a request to invoke section 122 (1) (b) of the Code and accordingly, the same was invoked. He would further submit that after giving due opportunity to the petitioner, final order was passed under section 122 (1) (b) of the Code and therefore, the impugned order is not only sustainable but also justifiable in the given facts and circumstances of the case.

12. I have heard the learned counsel appearing for both sides and have perused the materials placed before this Court.

13. It was argued by the learned counsel appearing for the petitioner that the very invocation of section 110 of the Code itself is bad

because he had never involved in criminal case before such invocation. In this context, the learned counsel appearing for the petitioner would also submit that necessary ingredients of habitual offenders has been quoted in section 110 of the Code, which clearly envisages that only against habitual offender, section 110 can be invoked and therefore in the absence of the same, such invocation on the part of the 1st respondent against the petitioner is bad in law. This Court has considered the status report filed by the 2nd respondent which has already been extracted above, and the same would clearly disclose the fact that the petitioner had involved in several crimes. Therefore this Court is of the view that there is every justification on the part of the respondents to invoke section 110 of the Criminal Procedure Code for execution of the bond. Moreover, at the time of execution of the bond, the petitioner has not made any objection to the said execution nor has he challenged the said invocation of section 110 of the Code. Therefore, the said arguments advanced in this regard, as against the invocation of section 110 of the Criminal Procedure Code, by the learned counsel appearing for the petitioner, is rejected.

14. Insofar as the invocation of section 122 (1) (b) of the Code is concerned, the learned counsel for the petitioner submits that only on satisfaction, the Executive Magistrate has to invoke section 122 (1) (b).

In this case, according to the learned counsel for the petitioner, there were no materials placed before the Executive Magistrate for his satisfaction and in fact, the materials mentioned in the impugned order, if at all produced by the 2nd respondent, the 2nd respondent should have satisfied the 1st respondent within the meaning of sub section (b) of section 122 (1), which according to the learned counsel for the petitioner, has not been followed and therefore, this order, according to him, is in violation of section 122 (1) (b) of the Code and, therefore, on that ground also, the learned counsel for the petitioner wants the impugned order to be set aside.

15. Insofar as the said contention of the learned counsel for the petitioner is concerned, this court wants to point out that the language used in section 122 (1) (b) of the Code is that : "Is proved to the satisfaction of such Magistrate or his successor in office, to have committed breach of bond". Therefore, the proven factor to the satisfaction of the Magistrate concerned is, as to whether the conditions of the bond has been violated by the person or not.

16. Here, in the case in hand, unmindful of the number of cases filed against the petitioner, even after execution of the bond, the petitioner had involved in two cases, because of which, he has been arrested, and he had been in jail at the time of consideration of the

violation of the bond condition, on his part, for invocation of section 122 (1) (b). Considering these aspects, this court is of the considered view that, these materials are enough to satisfy the Executive Magistrate within the meaning of section 122 (1) (b) of the Criminal Procedure Code. Since it is not the case of the petitioner that he has not been given an opportunity to confront with the request made by the 2nd respondent, that he has violated at least on two occasions during the bond period, the petitioner cannot now turn around and say that the 1st respondent, Executive Magistrate has passed the impugned order without being satisfied, as contemplated under section 122 (1) (b) of the Code. Therefore, on considering all these aspects, I am of the considered view that the impugned order does not suffer with any infirmity, muchless legal infirmity as projected by the learned counsel appearing for the petitioner. Therefore, the same is sustainable.

17. In the result the revision case fails. Accordingly it is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

WEB COPY

24.07.2017

Index : Yes/No
Internet : Yes/No
sji/tar

R.SURESH KUMAR, J.

sjj/tar

To

1. The First Class Executive Magistrate,
And Revenue Divisional Officer,
Udumalpet, Tiruppur District.
2. The Inspector of Police,
Udumalpet Police Station,
Udumalpet, Tiruppur District.

Crl.RC.No.723 of 2017
& Crl.M.P.No.6806 of 2017



WEB COPY 24.07.2017