

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2017

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THE HONOURABLE DR.JUSTICE.S.VIMALA

CrI.R.C.No.1569 of 2017

Siruthai Siranjeevi @ Siranjeevi

... Revision Petitioner

Vs

The State Rep. by

1. The Sub Divisional Magistrate and
Revenue Divisional Officer,
Mayiladuthurai,
Nagapattinam District.

2. The Inspector of police,
Mayiladuthurai Police Station,
Nagapattinam District.

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C. praying to call for the records relating to the order dated 08.08.2017 passed by the 1st respondent / Sub Divisional Magistrate and Revenue Divisional Officer, Mayiladuthurai, in M.C.No.17 of 2017 and to set aside the same.

For Petitioner : Mr.S.Rajanikanth

For Respondent : Mr.V.Arul
Additional Public Prosecutor

ORDER

The petitioner herein is the accused in Cr.No.278 of 2017 for the offences under Sections 341, 294(b) and 307 IPC and now he is in custody from 04.07.2017. Challenging the same, the Criminal Revision Case has been filed by the accused.

2. Brief facts:

Originally, the petitioner has been booked in a case in Cr.No.465 of 2017 and he appeared before the first respondent on 04.07.2017 in obedience to the summons and notice u/s.110 and 111 Cr.P.C. and he executed a bond for a sum of

Rs.25,000/- to maintain good behaviour in his locality for a period of six months from the date of execution of the bond. Thereafter, it is alleged that the petitioner, on 23.07.2017, indulged in the offence u/s.341, 294(b) and 307 IPC, which led to the registration of case in Cr.No.278 of 2017. Since the petitioner had indulged in the other offences immediately to the execution of bond, the first respondent has passed the order, ordering the petitioner to be imprisoned till the completion of the period of the bond executed in connection with the case in Cr.No.465 of 2017. Challenging the same, the accused has filed this Criminal Revision Case.

3. The main contention of the learned counsel for the revision petitioner/accused is that before cancellation of the bond executed in connection with the case in Cr.No.465 of 2017, the revision petitioner/accused was not given an opportunity of hearing as to why the bond executed by him should not be cancelled in view of the alleged crime committed by him. Hence, the order passed by the first respondent is legally unsustainable. It is further submitted by the learned counsel for the revision petitioner/accused that the petitioner/accused is nearing the end of his incarceration period.

4. Heard the learned Additional Public Prosecutor appearing for the respondent.

5. A perusal of the order passed by the respondent would go to show that the respondent, namely, the Sub Divisional Magistrate and Revenue Divisional Officer, Mayiladuthurai, had given an opportunity of hearing, when the accused/revision

petitioner had committed offence in Cr.No.465 of 2017 and directed the accused to execute the bond to maintain good behaviour for a period of six months. Allegedly, the petitioner had indulged in other offences on 23.07.2017 and a case has been registered in Cr.No.278 of 2017 for the offence u/s.341, 294(b) and 307 IPC.

6. It is contended by the learned counsel for the accused that the first respondent has to give opportunity of hearing to the accused as to why the bond executed by him should not be cancelled in view of the offence committed by him.

7. To appreciate the contention, it is necessary to look into the necessary provisions or law.

8. In the case of Murali @ Ponnuchamay Vs. The Sub Divisional Executive Magistrate and another [Crl.R.C.(MD) No.161 of 2016 dated 09.06.2016] as regards the nature of the power under [Section 122 Cr.P.C.](#) and the procedure to be followed, this Court has held as under:

"8. Under the Code of Criminal Procedure, there are Judicial Magistrates and Executive Magistrates. In order to keep peace, tranquility and also to prevent persons from indulging in any criminal activities, disturbing the peace of others, powers to take certain preventive measures have been given to the Executive Magistrates.

9. Under Section 117 Cr.P.C., upon satisfaction, the Executive Magistrate may direct such persons to execute a bond, but upto 3 years and when they breach the conditions, he can pass orders to detain them under Section 122 (1)(b) Cr.P.C.

10. It is pertinent to note that such a detention is different from a detention authorised by a Court. Jailing a person by a Judicial Order is

based on charges, evidence, trial and a detailed Judgment. However, in jailing a person, under Section 122 (1)(b) Cr.P.C., by the Executive Magistrate, there will be no charge, no evidence and no trial. Without any trial, the liberty of a person can be taken away by the Executive Magistrates. So, it is draconian in nature. An affront to civil and personal liberty.

11. Under Article 21, Constitution of India, no one shall be deprived of his life and liberty, except by procedure established by law. Thus Article 21 of the Constitution does not prevent the authorities to take away the liberty or life of a person. But, in doing so, they should follow prescribed procedures.

The procedure must be fair, reasonable, not unjust, not arbitrary and not whimsical.

12. 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 means he 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. At that time, the respondent has not given any opportunity of hearing to the accused as to why the bond executed by him should not be cancelled in view of the offence committed by him. Once the opportunity of hearing is not given to the parties, then, it is pure violation of natural justice.”

As per the decision of this court cited supra, in this case, the opportunity of hearing

<http://www.judis.jsc.jh> is not given to the accused. Hence, the order passed by the first respondent is liable

to be set aside.

6. Accordingly, the Criminal Revision Case is allowed. The order dated 08.08.2017 passed by the 1st respondent / Sub Divisional Magistrate and Revenue Divisional Officer, Mayiladuthurai, in M.C.No.17 of 2017 is hereby set aside.

20.12.2017

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Note : Issue order copy on or before 22.12.2017

To

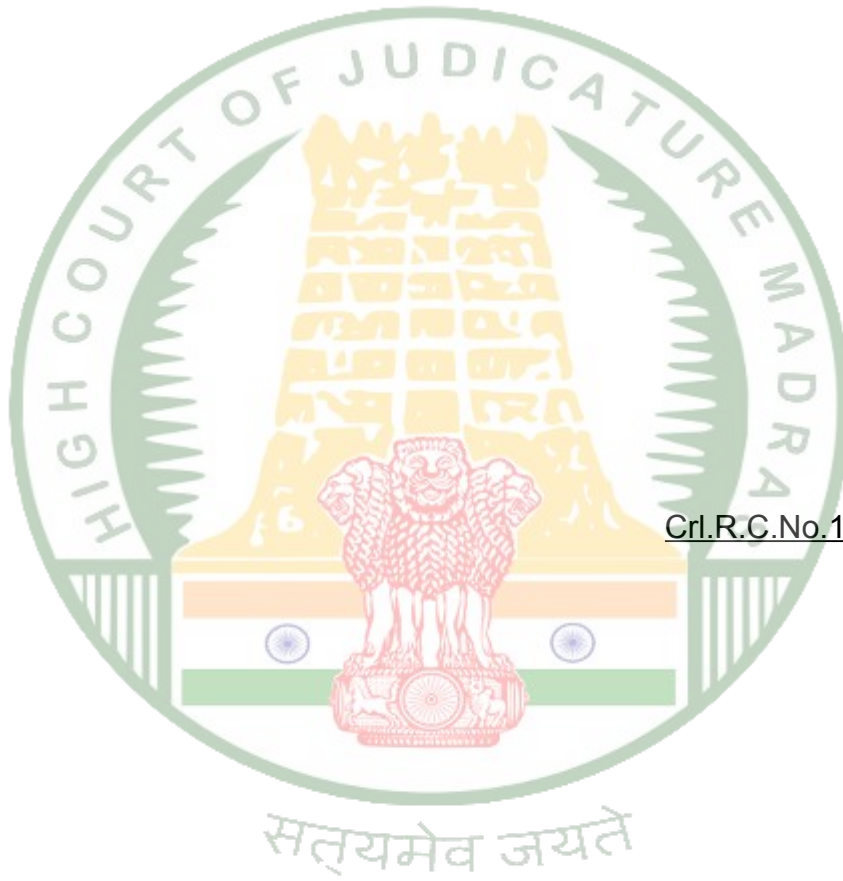
1. The Sub Divisional Magistrate and Revenue Divisional Officer,
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Dr. S.VIMALA, J.,

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