

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 20.09.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED**Cr1.RC(MD)Nos.116, 277 & 320 of 2017****and****CRL MP(MD)Nos.1101 & 1102 of 2017****CRL MP(MD)No.2559 of 2017**

[Orders Reserved on 14.06.2017]

Cr1.RC(MD)No.116 of 2017

Maruthu Pandi

: Petitioner

Vs.

1. The Administrative Executive Magistrate
-Cum- Deputy Commissioner of Police (L&O)
Madurai City
Madurai.

2. The Inspector of Police
B3 - Thepakulam (L&O) Police Station,
Madurai City.

3. The Superintendent of Prison,
Central Prison,
Madurai.

: Respondents

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records relating to the impugned order passed by the 1st respondent in M.C.No.767/Ni-Se.Na & Ka.Thu.Aa/Ma.Maa/2016, dated 24.11.2016 and set aside the same, as illegal.

Cr1.RC(MD)No.277 of 2017

Letchumanan

: Petitioner

Vs.

1. The Executive Magistrate /
Deputy Commissioner of Police,
Law and Order,
Madurai City, Madurai.



2. The Inspector of Police
Law and Order,
D2, Sellur Police Station,
Madurai.

3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

4. The State Represented by (R4 deleted as per the order of
The Home Secretary, this court dated 14.06.2017)
State of Tamil Nadu,
Secretariat,
Fort St.George,
Chennai - 600 009.

: Respondents

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C.,
praying to call for the records with the case in M.C.No.749/Ni-
Se.Na & Ka.Thu.Aa/Ma.Maa/2016, dated 13.03.2017, on the file of
the Respondent No.1 and set aside the same.

Crl.RC(MD)No.320 of 2017

Valli

: Petitioner

Vs.

1. The Executive Magistrate /
Deputy Commissioner of Police,
Law and Order,
Madurai City, Madurai.

2. The Inspector of Police
Law and Order,
C1, Thideer Nagar Police Station,
Madurai.

3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

4. The State Represented by (R4 deleted as per the order of
The Home Secretary, this court dated 14.06.2017)
State of Tamil Nadu,
Secretariat,
Fort St.George,
Chennai - 600 009.

: Respondents

<https://hcservices.ecourt.gov.in/hcservices/>
Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C.,
praying to call for the records connected with the M.C.No.976/Ni-



Se.Na & Ka.Thu.Aa/Ma.Maa/2016, dated 24.03.2017, on the file of the Respondent No.1 and set aside the same.

For Petitioner : Mr.M.S.Jeyakarthik
(In CrI.RC.116/2017)

For Petitioners : Mr.R.Alagumani
(In CrI.RC.277 & 320/2017)

For Respondents : Mr. R.Rajarathinam
State Public Prosecutor
Assisted by
Mr.C.Mayilvahana Rajendran
Addl.Public Prosecutor.

COMMON ORDER

The petitioner in CrI.RC(MD)No.116 of 2017, the petitioner in CrI.RC(MD)No.277 of 2017 and the petitioner in CrI.RC(MD)No.320 of 2017 have challenged the order of the first respondent passed in M.C.No.767/Ni-Se.Na & Ka.Thu.Aa/Ma.Maa/2016, dated 24.11.2016, M.C.No.749/Ni-Se.Na & Ka.Thu.Aa/Ma.Maa/2016, dated 13.03.2017, M.C.No.976/Ni-Se.Na & Ka.Thu.Aa/Ma.Maa/2016, dated 24.03.2017, under Section 122(1)(b) r/w. 117 Cr.P.C., detaining the son of the petitioner in CrI.RC(MD)No.116 of 2017 and other petitioners respectively in violation of the terms of the bond executed for keeping peace on involvement of the criminal case registered by the 2nd respondent. While the said bail bond is in force and while the detainee were confined in Central Prison, Madurai, the impugned order has been passed against the petitioner in CrI.RC(MD)No.277 of 2017 stating that 3 witnesses were examined in the presence of the petitioner on 13.03.2017 and the petitioner in CrI.RC(MD)No.320 of 2017 that 3 witnesses were examined in the presence of the petitioner on 24.03.2017 by the first respondent herein respectively and an opportunity to cross-examine the said witnesses and to produce the witness and documents were given to the petitioners, but the petitioners have not chosen to cross-examine the those witnesses and also to produce any witnesses or documents. No witnesses were examined in the presence of the detainee in CrI.RC(MD)No.116 of 2017, but on the basis of the report given by the 2nd respondent, the first respondent has passed the impugned order of detention, dated 24.11.2016 in respect of the son of the petitioner in CrI.RC(MD)No.116 of 2017.

2. The learned counsel appearing for the petitioners would submit that the impugned proceedings passed by the first respondent is per se illegal and arbitrary in law in the facts and circumstances of the case and the first respondent did not record reasons for coming to the conclusion that the petitioners committed breach of peace; that the first respondent without issuing any notice or giving opportunity to the petitioners passed



the impugned order in violation of the principles of natural justice; that the first respondent failed to supply all documents mentioned in the impugned order and therefore, the petitioners cannot able to submit effective representation; that the first respondent is not competent authority to pass the impugned orders of detention; that the Right to Life guaranteed under Article 21 of the Constitution of India is violated against the petitioners; that the first respondent did not give an opportunity to prove the innocence of the petitioners and the first respondent failed to follow the mandatory procedures while passing the impugned orders; and the petitioners were denied to cross-examine the witnesses and did not communicate the particulars and statement of witnesses and not given prior intimation or notice to the petitioners herein.

3. The learned State Public Prosecutor assisted by the learned Additional Public Prosecutor, on instructions, would contend that there is no violation in the proceedings and the same is passed after complying with all the requirements as per law and the first respondent applied his mind and gone through the entire records and after complete satisfaction, the impugned orders were passed against the detainees and sufficient opportunities were given to the detainees for the show-cause notice and all the particulars along with witness details were duly communicated and the impugned orders were passed by following the lawful procedures laid by the Criminal Procedure Code and the first respondent is the competent to initiate action under Section 110 of Cr.P.C., as per G.O.Ms.No.181 Home (Cts VI-A) Department, dated 25.02.2014 and also as per the Circular Memorandum in R.C.No.225463/A&R-2/2014, dated 19.06.2014 of the Deputy Commissioner of Police, Law and Order, Tamil Nadu.

4. The respondent No.2 alone filed a counter statement in respect of CrI.RC(MD)No.116 of 2017 & CrI.RC(MD)No.320 of 2017 and the counsel for the petitioner in CrI.RC(MD)No.277 of 2017 and CrI.RC(MD)No.320 of 2017 made an endorsement deleting the 4th respondent from the said Revision Petitions in respect of relief of alleged illegal detention of the petitioners. The 2nd respondent filed a typed set of documents in CrI.RC(MD)No.320 of 2017 enclosing the copy of G.O.Ms.No.181 Home (Cts VI-A) Department, dated 25.02.2014 and also the Circular Memorandum in R.C.No.225463/A&R-2/2014, dated 19.06.2014 and the show-cause Notice, dated 24.03.2016 giving intimation in respect of cancellation of bond under Section 120(1)(b) of Cr.P.C., dated 22.03.2016 issued by the first respondent and also the statement given by the first respondent by the witnesses in the presence of the petitioner in CrI.RC(MD)No.320 of 2017.

<https://hcservices.ecourts.gov.in/Services> 5. The respondent No.2 submitted the materials on record and the impugned orders passed by the first respondent against all the detainees. Heard and considered the rival submissions made by the counsel appearing



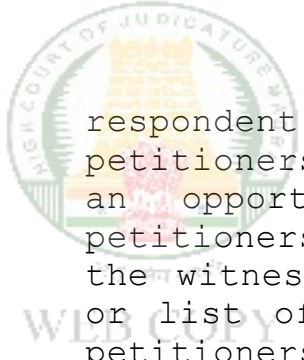
for the petitioners and the learned State Public Prosecutor assisted by the learned Additional Public Prosecutor.

6. Admittedly, the first respondent initiated the impugned proceedings under Section 110 Cr.P.C., on the basis of the FIR registered by the 2nd respondent against the petitioners under Section 110 Cr.P.C. Intimation in respect of cancellation of bond executed by the petitioner in CrI.R.C(MD)No.277 of 2017; then the son of the petitioner in CrI.RC(MD)No.116 of 2017 and the petitioner in CrI.RC(MD)No.320 of 2017 were given by the first respondent, dated 10.03.2017, 23.11.2016 and 22.03.2017 and served upon the detainee respectively while they were in prison. The bonds for one year in keeping good behaviour were executed by the detainee respectively under Section 117 Cr.P.C., for Rs.1,00,000/- under Section 110 Cr.P.C., proceedings initiated by the first respondent. The petitioner in CrI.RC(MD)No.320 of 2017 is the mother of the detainee.

7. On perusal of the impugned order, dated 24.11.2016 passed against the petitioner in CrI.RC(MD)No.116 of 2017 by the first respondent, nothing is mentioned about the examination of witnesses, supply of materials, including the report of the Inspector of Police concerned sent to the first respondent for arriving at a just conclusion that the petitioner has violated the bond condition and further course of supplying the documents and getting view or reply from the petitioner / detainee and the appearance of the petitioner before the first respondent and an opportunity of being heard was given to him for the conclusion reached by the first respondent.

8. On perusal of the impugned order, dated 13.03.2017 in respect of the petitioner in CrI.RC(MD)No.277 of 2017, dated 24.03.2016 and in respect of the son of the petitioner in CrI.RC(MD)No.320 of 2017 passed by the first respondent, nothing is mentioned about the issuance of show-cause notices in mentioning the date of appearance before him and the way in which the petitioners appeared before the first respondent, an opportunity of being given to the petitioners by supplying the materials including the report of the Inspector of Police concerned. Though the petitioners have appeared before the first respondent on the said date, no documents or materials in respect of initiation of proceedings against the petitioners under Section 120(1)(b) of Cr.P.C., were given to the petitioners.

9. The letter dated 10.03.2017, 23.11.2016 and 22.03.2017 issued by the first respondent to the concerned detainee are not construed to be show-cause notices, but an information to consider the detention of detainee in respect of cancellation of bond under Section 120(1)(b) of Cr.P.C., since the petitioners have violated the terms of the bond executed under Section 117 Cr.P.C., The date of hearing is not mentioned in the above notices. The first

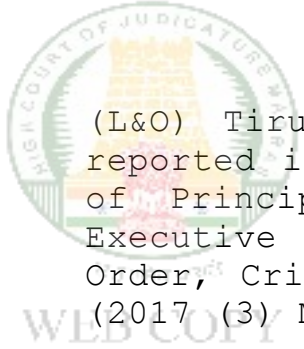


respondent had passed the impugned order of detention against the petitioners mechanically by cancelling the bonds without providing an opportunity and supplying sufficient materials to the petitioners for facing the charges and also for cross-examining the witnesses, examined by the first respondent. No prior notice or list of witnesses to be examined, were not furnished to the petitioners prior to passing the impugned orders of detention or before examining the witnesses. Merely based on the report of the 2nd respondent and statement of witnesses, without furnishing to the petitioners, the impugned orders were passed, which would vitiate the entire proceedings.

10. The detention under Section 120(1)(b) of Cr.P.C., is different from a detention authorized by the Court. Jailing a person by a judicial order is based on charges, evidence, trial and a detailed Judgment. No one shall be deprived of his life and liberty, except by procedures established by law under Article 21 of the Constitution of India. It does not prevent the authority to take away the liberty or life of a person, but doing so, they should follow the prescribed procedures and the same must be fair, reasonable, not just, not arbitrary, not whimsical (*Menaka Gandhi Vs. Union of India*) reported in (AIR 1978 SC 597)

11. Before ordering a person to put in jail under Section 120(1)(b) Cr.P.C., the Executive Magistrate shall be satisfied himself that the person has breached the bond conditions and he must also record the grounds for proof. That means, he must apply his mind and pass orders and he cannot pass orders mechanically. If the satisfaction is not recorded, it will be presumed that the detaining authority sending a person to jail is arbitrary, mechanical, not fair and unjust. The first respondent is bound to follow the law when it is concerned with the liberty of a person. When it is stated that a breach has to be proved then necessarily the person against whom it is sought to be proved has to be heard. Satisfaction of the Magistrate should be based upon the materials produced by the Police Officer concerned as well as the contra materials, if any, that could be produced by the person against whom the said provision is sought to be invoked. Merely because, certain cases have been registered against the petitioner ipso facto the same cannot be sufficient ground leading to prove the breach of bond to the satisfaction of the Magistrate concerned.

12. The learned counsel appearing for the petitioners would rely the following the decisions in support of his contention that the impugned orders of detention suffers from illegality, propriety and it is vitiated. (1) The Judgment of Principal Bench of this Court in *Bala alias Balakrishnan Vs. Administrative Services, Trichy City and Others* reported in (2016 Cr.L.J.4603); (2) the Judgment of this Court in *Sivashanmuga Sundaram Vs. Executive Magistrate / Deputy Commissioner of Police*



(L&O) Tirunelveli Town Police Station, Tirunelveli and 2 others reported in (2017 (1) TLNJ 516 (Criminal)) and (3) the Judgment of Principal Bench of this Court in Selvam @ Selvaraj Vs. Executive Magistrate cum Deputy Commissioner of Police (Law & Order, Crime and Traffic), Tiruppur City and Another reported in (2017 (3) MLJ (Crl.) 430).

13. The first respondent is the competent jurisdictional Executive Magistrate to exercise the powers under Sections 107 to 110 Cr.P.C., as per G.O.Ms.NO.181 Home (Courts) 6A Department, dated 25.02.2014. The first respondent has not followed the procedures mentioned in the Circular Memorandum in R.C.No.225463/A&R-2/2014, dated 19.06.2014 of the Deputy Commissioner of Police, Law and Order, Tamil Nadu.

14. Considering the above facts and circumstances of the case, this Court is of the firm view that the impugned orders passed by the first respondent cannot be sustained and accordingly, those orders are liable to be set aside.

15. In the result, the Criminal Revision Petitions are stand allowed and the impugned detention orders passed by the 1st respondent in M.C.No.767/Ni-Se.Na & Ka.Thu.Aa/Ma.Maa/2016, dated 24.11.2016, in M.C.No.749/Ni-Se.Na & Ka.Thu.Aa/Ma.Maa/2016, dated 13.03.2017 and in M.C.No.976/Ni-Se.Na & Ka.Thu.Aa/Ma.Maa/2016, dated 24.03.2017 are set aside. The detenues shall be set at liberty forthwith, if their further detention is no longer required in connection with any other case or proceedings pending against them. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

1. The Home Secretary,
State of Tamil Nadu,
Secretariat,
Fort St.George,
Chennai - 600 009.

2. The Administrative Executive Magistrate
-Cum- Deputy Commissioner of Police (L&O)

<https://hcservices.maduraisc.in/HCServices/>
Madurai.



3. The Inspector of Police
B3 - Thepakulam (L&O) Police Station,
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5. The Inspector of Police
Law and Order,
D2, Sellur Police Station,
Madurai.

6. The Inspector of Police
Law and Order,
C1, Thideer Nagar Police Station,
Madurai.

7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2cc to M/S. R.ALAGUMANI, Advocate, SR.No.80031 & 80033.

Orders made in
Crl.RC(MD)Nos.116, 277 & 320 of 2017
20.09.2017

MPK

SDS/SKN:RSK/SAR 2/21.09.2017/8P/10C