



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2017

[Orders Reserved on 03.08.2017]

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CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.302 of 2017

and

CRL MP(MD)No.2805 of 2017

Sathish Kumar

: Petitioner

Vs.

1.State Rep.by

The Inspector of Police,
Srirangam Police Station,
Tiruchirappalli City,

2.The Administrative Executive

Magistrate,
Deputy Commissioner of Police,
Tiruchirappalli City,
Trichy District.

: Respondents

(R2 impleaded as per order dated 24.07.2017 in CRL MP(MD) No.6624/2017)

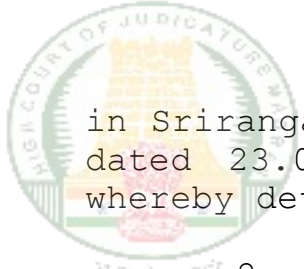
Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to the order of the Administrative Executive Magistrate / Deputy Commissioner of Police, Tiruchirappalli City, passed in M.C.No.645 of 2016, in C.No.573/EMC/D.C.Trichy City/2016 in Srirangam P.S.Cr.No.821/2016, Under Section.107 Cr.P.C., dated 23.03.2017 and set aside the same.

For Petitioner
For Respondents

:Mr.T.Lenin Kumar
:Mr.A.Ramar
Additional Public Prosecutor

O R D E R

This Criminal Revision is preferred praying to set aside the order of the 2nd respondent / Administrative Executive Magistrate / Deputy Commissioner of Police, Tiruchirappalli City, passed in M.C.No.645 of 2016, in C.No.573/EMC/D.C.Trichy City/2016



in Srirangam P.S. Crime No.821/2016, under Section 107 of Cr.P.C., dated 23.03.2017, under Section 122(1)(b) r/w 111 of Cr.P.C., whereby detaining the petitioner in custody.

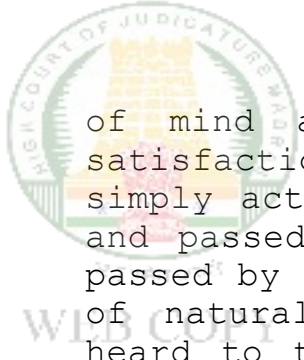
2. Admittedly, the proceedings under Section 107 Cr.P.C., have been initiated on receipt of information from the first respondent by way of registering the case against the petitioner in Crime No.821 of 2016, on the file of Srirangam Police Station, Trichy City, and the petitioner had executed a bond, dated 09.12.2016, before the 2nd respondent whereby, the petitioner has agreed not to disturb the peace to the Society for one year from the date of execution of the said bond for Rs.10,000/-, with two sureties each for a like sum. On request by the first respondent, before the 2nd respondent / Administrative Executive Magistrate / Deputy Commissioner of Police, Tiruchirappalli City, to pass an order of detention against the petitioner, under Section 122(1)(b) of Cr.P.C., stating that the petitioner had breached the said bond, dated 09.12.2016 by his involvement in Crime No.242 of 2017, for the offences under Sections 379 & 430 of IPC., and under Section 3 of TNPPDL Act, 1992, registered by the first respondent, who arrested the petitioner and was remanded to judicial custody in that case on 18.03.2017. That request of the first respondent was considered by the 2nd respondent in his impugned order, dated 23.03.2017, under Section 122(1)(b) Cr.P.C., cancelling the bond executed on 09.12.2016, by the petitioner having breached the said bond and ordered for detention to undergo the balance period of 261 days in prison.

3. The petitioner / detainee has filed the present Revision questioning the correctness, legality or propriety of the findings, sentence and order passed by the 2nd respondent herein under Section 122(1)(b) Cr.P.C., dated 23.03.2017 in M.C.No.645 of 2016, in C.No.573/EMC/D.C.Trichy City/2016 in Srirangam P.S. Crime No.821/2016, Under Section.107 Cr.P.C.

4. The respondents filed counter statements separately and the learned Additional Public Prosecutor appearing for the respondents and the counsel for the petitioner agreed for final disposal of this Revision Petition, based on available records, at the admission stage itself.

5. The respondents have not chosen to file any records pertaining to the impugned proceedings in this Revision.

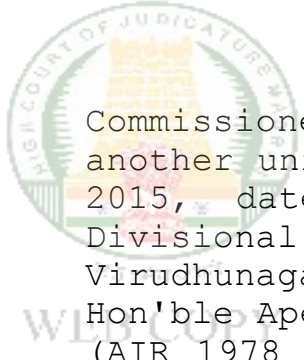
6. The learned counsel appearing for the Revision Petitioner would contend that the detention order has been passed in violation of Article 21 of the Constitution of India; that the ~~Section 122 Cr.P.C., would not confer jurisdiction on the Sub-Divisional Magistrate and such impugned order of detention is without jurisdiction; that there was no independent application~~



of mind and the authority has not arrived at a subjective satisfaction before passing the impugned order and the authority simply acted upon the requisition of the first respondent herein and passed the impugned order; that the impugned order has been passed by the 2nd respondent herein in violation of the principles of natural justice, without providing an opportunity of being heard to the petitioner herein and that the registration of the case in Crime No.821 of 2016, for the alleged offence under Section 107 of Cr.P.C., is illegal because Section 107 Cr.P.C., is procedural in nature and is intended for the Executive Magistrate to initiate action against the person, who disturb the public peace and tranquility.

7. Continuing further, the learned counsel would submit that the 2nd respondent herein has relied upon the statements of the first respondent / the Sub-Inspector of Police of Srirangam Police Station, the Village Administrative Officer of Vellithirumutham Village and the Village Assistant of the said Village for passing the impugned order. But, no copy of the said statements recorded by the 2nd respondent herein is supplied to the petitioner to enable him to face the enquiry effectively and hence, the Authority / 2nd respondent herein passed the detention order mechanically, without serving the said relied documents and the petitioner was not given an opportunity to cross-examine the so called witnesses, who made the alleged statements during enquiry before the 2nd respondent herein and that the order of detention has been passed by the Executive Magistrate / 2nd respondent with pre-determination in the information, dated 21.03.2017 itself and before passing the order of detention, the Executive Magistrate / 2nd respondent herein informed the petitioner that he is going to detain him and hence, the impugned order is liable to be set aside.

8. The counsel appearing for the petitioner, in support of his contention that the impugned order of detention by cancelling the bond has been passed without following the principles of natural justice and the alleged communication / proceedings dated 21.03.2017 of the 2nd respondent herein does not amount to Notice / Constructive Notice to provide an opportunity to show-cause for cancellation of bond and also the Authority / 2nd respondent has not arrived at a subjective satisfaction, required under Section 122(1)(b) for passing the impugned order and the 2nd respondent has solely act upon the requisition of the first respondent and the statements of the Police Officials and two revenue officials without providing an opportunity of being heard to the petitioner herein, has relied on the decisions of this Court in (i) Bala alias Bala Krishnan Vs. Administrative Executive Magistrate, Trichy City and Others reported in (2016 Services Courts & Tribunals Review Services/ (ii). An unreported Judgment of this Court in CrI.O.P(MD)No.13878 & 13957 of 2015, dated 29.07.2015 in Pandi @ Suriyapandi Sarayapandi Vs. the Executive Magistrate / Assistant

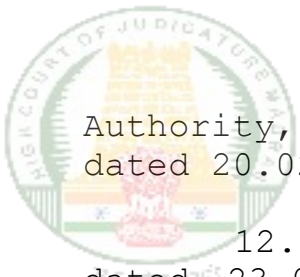


Commissioner of Police, Trichy City and 2 others; (iii) Yet another unreported Judgment of this Court in CrI.R.C.(MD)No.161 of 2015, dated 09.06.2016 in Murali @ Ponnusamy Vs. the Sub-Divisional Executive Magistrate and Assistant Collector, Sivakasi, Virudhunagar District and Another and (iv) the Judgment of the Hon'ble Apex Court in Meneka Gandhi Vs. Union of India reported in (AIR 1978 SC 597) wherein it has been held that under Article 21 of the Constitution of India no one shall be deprived of life and liberty, except by procedures established by law. It does not prevent the Authorities to take away the liberty or life of a person, but in doing so, they should follow the prescribed procedures. The procedures must be fair, reasonable, just and not arbitrary and not whimsical.

9. The learned Additional Public Prosecutor appearing for the respondents, on instructions and based on the counter statements, would submit that the 2nd respondent has followed the due process of law before passing the impugned order of cancellation of detention; that he examined the witnesses available on record in the presence of the petitioner and applied his mind to the satisfaction that the petitioner has breached the bond executed by him and passed the order to cancel the bond, after due consideration and the 2nd respondent is the competent authority, as the Executive Authority to exercise the power under Sections 107 to 110 Cr.P.C., in view of G.O.Ms.No.181 Home (Cts) VI A Department, dated 20.02.2014, passed by the Government, as per the Section 20(1) of Cr.P.C., and that the petitioner had created panic in the minds of the public; that therefore, creating an environment of insecurity amongst the public and in order to create a peaceful society, the 2nd respondent herein had passed the order, as a preventive measure and hence, the petitioner having breached the bond has been justly detained in prison to undergo incarceration of the unexpired period of bond in accordance with law and the petitioner shall not be permitted to raise trifling issues to thwart the process of law and hence, this Revision Petition is liable to be dismissed, as devoid of merits.

10. Perused the materials available on record and considered the rival submissions anxiously made by either counsels.

11. Under the Code of Criminal Procedure, the Executive Magistrates have been given powers to take certain preventive measures to prevent the persons from indulging in any criminal activities disturbing the peace of others in order to keep peace and tranquility. Under Section 117 of Cr.P.C., the Executive Magistrate may direct such persons upon satisfaction to execute bonds, for a period not exceeding three years and, when they breached the condition, he can pass orders to detain them under Section 122(1)(b) of Cr.P.C. It is not denied that the 2nd respondent is the Competent



Authority, in view of G.O.Ms.No.181 Home (Cts) VI A Department, dated 20.02.2014, as contended by the 2nd respondent herein.

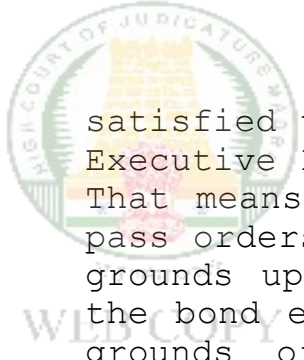
12. On perusal of the impugned order of the 2nd respondent, dated 23.03.2017 it is revealed that the petitioner, who was remanded in Crime No.242 of 2017, on 18.03.2017 into judicial custody and was confined at Central Prison, Tiruchirappalli, was produced before the 2nd respondent on 23.03.2017 and four witnesses ie., the Inspector of Police, Sub-Inspector of Police of Srirangam Police Station, Village Administrative Officer and Village Assistant of Vellithirumutham Village were examined by the 2nd respondent in the presence of the petitioner. But, no opportunity was given to the petitioner for cross-examination of the above witnesses. No copy of the statements of the above witnesses and the copy of the FIR registered in Crime No.821 of 2016, under Section 107 Cr.P.C., and in Crime No.242 of 2017 against the petitioner are supplied, enabling him to face the enquiry effectively, since the impugned order of detention is passed on on the basis of the above documents. The 2nd respondent relied on the witness statements of 1st and 4th witnesses and other documents for coming to the conclusion to cancel the bond, dated 09.12.2016 in the order itself.

13. It is pertinent to note that the petitioner was implicated as an accused in Crime No.242 of 2017 / the ground case for cancellation of bonds, based on the confession of the co-accused viz., one Mr.M.Parthiban S/o. Krishnamurthy. It is further stated that the tipper lorry, bearing Registration No.TN-47-AW-1122 is said to be owned to the petitioner herein and driven by the said Parthiban, who said to have used the above vehicle for transporting 2 Units of sand illegally and the said vehicle was also seized along with the sand in the presence of the witness under seizure mahazar. Copy of the confession statement of the said Parthiban and seizure mahazar and also the Registration Certificate of the said vehicle are not furnished to the petitioner herein.

14. A perusal of the order under challenge would show that it has been passed merely based upon the reports of the Inspector of Police. When it is stated that a breach has to be proved, then, necessarily, the person against whom which is sought to be proved has to be heard. It goes without saying that an opportunity of being heard has to be afforded. The satisfaction of the Magistrate has to be recorded in the order to be passed. Such satisfaction should be based upon the materials to be 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.

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

15. As per the Section 122(1)(b) of Cr.P.C., the Executive Magistrate, before ordering a person to be in jail, shall be



satisfied that the person has breached the bond conditions and the Executive Magistrate must also record the grounds for such proof. That means, he must apply his mind and pass orders and he cannot pass orders mechanically. His order must show atleast briefly the grounds upon which he has satisfied that the person has breached the bond executed by him. The detention order must disclose the grounds of proof, otherwise, the Court cannot see what has conspired in the mind of the Executive Magistrate in passing the detention order.

16. It is admitted that the proceedings, dated 21.03.2017 was given to the petitioner while he is in Central Prison at Trichirappalli. The copy of the said proceedings, dated 21.03.2017, is also filed by the petitioner herein. On perusal of the said proceedings would reveal that no date of hearing is fixed in the proceedings and no time limit is also indicated before which the petitioner is expected to send his representation, as against the proposed proceedings. The contention of the learned Additional Public Prosecutor appearing for the respondents that the communication / proceedings, dated 21.03.2017 would amount to Notice / Constructive Notice, cannot be accepted. The contents of the proceedings, dated 21.03.2017 would show the pre-determination of cancelling the bond for breach and passing an order of detention under Section 122(1)(b) of Cr.P.C. Before passing the impugned order of detention, the 2nd respondent herein informed the petitioner through his proceedings, dated 21.03.2017 that he is going to detain him by cancelling the bond executed by the petitioner before passing the impugned order of detention. The Executive Magistrate / 2nd respondent herein without arriving at a subjective satisfaction and without recording the grounds has passed the impugned order of detention against the petitioner mechanically.

17. Considering the above facts and circumstances of the case and the legal position discussed above, this Criminal Revision Petition is allowed and the impugned proceedings issued by the 2nd respondent, on the basis of the requisition of the 1st respondent herein in M.C.No.645 of 2016, in C.No.573/EMC/D.C.Trichy City/2016 in Srirangam P.S.Cr.No.821/2016, Under Section.107 Cr.P.C., dated 23.03.2017, under Section 107 Cr.P.C., is hereby set aside. The Superintendent of Central Prison, Tiruchirappalli, is directed to release the petitioner forthwith, if he is no longer required in connection with any other case / proceedings. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/



To

1.The Inspector of Police,
Srirangam Police Station,
Tiruchirappalli City,

2.The Administrative Executive Magistrate/
Deputy Commissioner of Police,
Tiruchirappalli City,
Trichy District.

3.The Superintendent of Central Prison,
Trichy.

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

+1CC to Mr.T.Lenin Kumar, Advocate, SR.No. 71579

Order made in
Cr1.RC(MD)No.302 of 2017

Dated:-
09.08.2017

MPK
AM/SV AAM/SAR 2/09.08.2017/7P/6C