



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

WEB COPY

Cr1.RC(MD)No.317 of 2017

and

CRL MP(MD)No.3049 of 2017

[Orders Reserved on 26.04.2017]

Sivashanmuga Sundaram

: Petitioner / Accused

Vs.

1.The Executive Magistrate /
Deputy Commissioner of Police L & O,
Tirunelveli City,
Tirunelveli.

2.The Inspector of Police,
Law and Order,
Tirunelveli Town Police Station,
Tirunelveli.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

: Respondents / Complainants

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records connected with the case (EMC) No.334/Sec/Pro/D.C.L & O/Tin-C/2016, dated 17.10.2016, on the file of the respondent No.1 and set aside the same.

For Petitioner : Mr.M.Prabhu

For M/s.Polax Legal Solutions

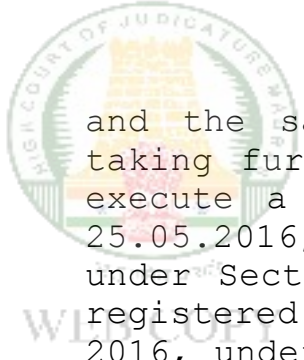
For Respondents : Mr.P.Kannithevan,

Govt.Advocate (crl.side)

ORDER

The present Revision is filed by the Petitioner praying to call for the records in connected with the case (EMC) No.334/Sec/Pro/D.C.L & O/Tin-C/2016, dated 17.10.2016, on the file of the Respondent No.1 and set aside the same.

2. The petitioner is the resident of Vellanthangi, Pillayarkovil Street, Tirunelveli Town, Tirunelveli District. A case was registered by the second respondent herein against the petitioner in Crime No.299 of 2016, under Section 110 of Cr.P.C.,



and the same was forwarded to the first respondent herein for taking further necessary action. The petitioner was directed to execute a bond for Rs.30,000/-, for a period of one year from 25.05.2016, for keeping peace and the petitioner executed the same under Section 117 of Cr.P.C. On 20.07.2016, an another case was registered against the petitioner and others in Crime No.427 of 2016, under Sections 302 @ 147, 148 and 302 IPC., r/w Sections 120 (b) and 201 IPC., by the second respondent herein and the petitioner was arrested and remanded to judicial custody in the said criminal case.

3. The learned Executive Magistrate / R1 came to the conclusion that the petitioner violated the condition imposed in the bond that is to keep peace for a period of one year by involving himself in the said criminal case and the Executive Magistrate / R1 issued the impugned proceedings under Section 120 (1)(b) Cr.P.C., dated 17.10.2016, detaining the petitioner in prison, until the expiry of the bond period ie., till 24.05.2017.

4. The learned counsel appearing for the petitioner assailed the impugned order, dated 17.10.2016 on the following grounds:-

"i. The first respondent is not competent to detain the petitioner for one year through the impugned order.

ii. The first respondent did not provide any opportunity to defend the case of the detenue before passing the impugned order.

iii. The first respondent did not furnish any document to the petitioner before passing the impugned order and therefore, the petitioner cannot defend his case in effective manner and in accordance with law.

iv. The first respondent failed to follow the principles of natural justice and provide fair hearing to the petitioner before passing the impugned order."

5. The learned Government Advocate (crl.side) appearing for the respondents would submit that the first respondent herein is the Competent Authority and having all the powers to pass the impugned order, as per G.O.(Ms)No.181 Home (Cts VIA) Department, dated 20.02.2014 of Tamil Nadu Government; that the learned Executive Magistrate strictly followed the procedures laid down in the Act and enquired the petitioner as well as the witnesses and then only passed the impugned order and that all opportunities were given to the petitioner to explain his version before the first respondent and after hearing the explanation only, the first respondent has passed the impugned order and hence, this Revision against the impugned order is liable to be dismissed.



6. The learned Government Advocate (crl.side) invited the attention of this Court to the proceedings issued by the learned Executive Magistrate, dated 17.10.2016 under which it is stated that, as the petitioner is in custody in connection with the case registered in Crime No.427 of 2016 of the second respondent, the bond executed by him under Section 117 Cr.P.C., is cancelled and it is further intimated that the petitioner would be subjected to Section 120(1)(b) of Cr.P.C., He would also submit that no Notice is required to be sent by the respondent, as Section 122 Cr.P.C., does not contemplate the issuance of such Notice.

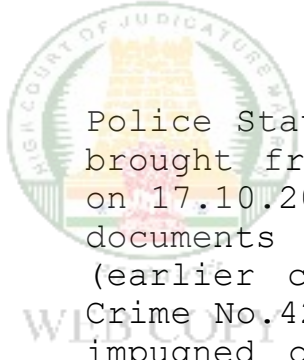
7. From the perusal of the records and in view of the contentions raised by both sides it is evident that the Executive Magistrate / R1, who is the competent Authority, in view of the said Government Order, has passed the impugned order, without following the principles of natural justice.

8. The served copy of the Notice, dated 23.09.2016 to the petitioner while he was in custody, through the Superintendent, Central Prison, Palayamkottai, Tirunelveli / R3, is produced by the petitioner and is also perused. From the reading of the said Notice, dated 23.09.2016 it is apparent that it is merely an intimation / 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 proceedings. Under such circumstances, the contention of the learned Government Advocate (crl.side) appearing for the respondents that the communication, dated 23.09.2016 would amount to Notice, cannot be accepted.

9. In the case of **Menaka Gandhi Vs. Union of India** reported in **(AIR 1978 SC 597)** wherein, the Hon'ble Apex Court has held as under:-

"...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 principles of **Audi alteram partem**, which mandates that no one shall be condemned unheard, is part of the Rules of Natural Justice."

10. The impugned order, dated 17.10.2016 reveals the fact that the Investigation Officer one Tmt. S.Velkani, Inspector of Police Station, All Women Police Station, Palayamkottai, the then Inspector of Police, incharge of Tirunelveli Town Police Station and Thiru.M.Somasundaram, Inspector of Police, Tirunelveli Town Police Station were summoned and enquired and their statements were recorded on 28.09.2016 and again Thiru.S.Somasundaram, Inspector of Police, Tirunelveli Police Station was summoned with case diary in respect of Crime No.427 of 2016 of Tirunelveli Town



Police Station on 17.10.2016 and was enquired. The petitioner was brought from Central Prison only on 01.10.2016 and subsequently, on 17.10.2016 and there is no mention about furnishing the copy of documents in Crime No.1484 of 2013 and in Crime No.620 of 2014 (earlier cases shown for his motive in commission of murder in Crime No.427 of 2016) and in Crime No.427 of 2016 mentioned in the impugned order and also the statement of the witnesses (police officials) recorded by the Executive Magistrate on 28.09.2016. The complainant of the above said criminal cases is also not examined in the impugned proceedings, which has to be the basis for the breach of bond.

11. 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. A 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. The impugned order is simply duplicating the report of the Sponsoring Authority / R2 herein. Merely because certain cases have been registered against the petitioner, Ipso facto, the same cannot be said to be sufficient grounds leading to prove the breach of bond to the satisfaction of the Magistrate concerned. The past cases referred in the impugned order are not in proximity of bond of time to the present enquiry proceedings. The first respondent has simply read the report of the Sponsoring Authority / R2 and in his strange sentence he says that it is necessary to detain him.

12. In the decision reported in **(2016 Cr1.L.J. 4603)** of Madurai Bench of Madras High Court between **Bala @ Balakrishnan and Administrative Executive Magistrate, Trichy City and Others** it is held that " as per Section 122(1)(b) of Cr.P.C., 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 order 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) of 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, the Court cannot see what has transpired in the mind of the Executive Magistrate in passing the detention order, more particularly, when these orders are reversible by the Sessions Judges?".



13. Hence, the impugned detention order has not been passed in accordance with law and has been passed mechanically taking of / deprivation of a person's personal liberty will not stand the test of law and the impugned order suffers from legality, propriety and it is vitiated. From the legal position discussed above, it is clear that the impugned order has been passed without following the principles of natural justice and the same is liable to be set aside

14. Accordingly, this Criminal Revision Petition is allowed and the impugned proceedings issued by the first respondent herein in (EMC) No.334/Sec/Pro/D.C.L & O/Tin-C/2016, dated 17.10.2016, is hereby set aside. The 3rd respondent herein is directed to set at liberty the Revision Petitioner, if his further detention is no longer required in connection with any other case or proceedings. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

- 1.The Executive Magistrate /
Deputy Commissioner of Police L & O,
Tirunelveli City, Tirunelveli.
 - 2.The Inspector of Police,
Law and Order, Tirunelveli Town Police Station,
Tirunelveli.
 - 3.The Superintendent,
Central Prison, Palayamkottai,
Tirunelveli District.
 - 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 - 5.The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court, Madurai.
- +1 CC to M/s.POLAX LEGAL SOLUTIONS, SR No. 56215
MPK
PSM/RSK/SAR3/11.05.2017/5P/7C

Pre-Delivery Order made in
Cr1.RC(MD)No.317 of 2017

and
CRL MP(MD)No.3049 of 2017

Dated:- **10.05.2017**