



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C (MD) .No.365 of 2017

Manikandaraja

... Petitioner

Vs.

1. The Executive Magistrate/
Deputy Commissioner of Police,
Law and Order
Madurai City,
Madurai.
2. The Inspector of Police,
Law and Order,
C-3, S.S.Colony Police Station,
Madurai.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The State rep.by the Home Secretary,
State of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-9.

(R-4 deleted as per order of this
Hon'ble Court made in Cr1.R.C.365/2017
dated 20.06.2017)

... Respondents

Prayer : Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to call for the records connected with M.C.No.780/ நி.செ.ந & கா.து.ஆ/ம.மா/2016 , dated 30.03.2017 on the file of the respondent No.1 and set aside the same.

For Petitioner : Mr.L.M.Viji Boominathan

For Respondents : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

**O R D E R**

Challenging the order passed under Section 122(1)(b) read with 117 Cr.P.C., detaining the petitioner for breach of bond executed by him, the present Criminal Revision Case has been filed.

2.The petitioner is an accused in Crime No.588 of 2016 on the file of the second respondent police station. Thereafter, a proceedings under Section 110 Cr.P.C., has been initiated by the Executive Magistrate in the above Crime number and the petitioner has also executed a bond on 05.10.2016 for preserving peace for a period of one year. While the above bond was in force, on 25.03.2017, the petitioner involved in another crime. Hence, a case has been registered by the second respondent in Crime No.299 of 2017 for the offence under Sections 341, 294(b), 392 r/w 397, 506(ii) I.P.C. Since the petitioner has violated the bond executed by him, a proceeding has been initiated by the first respondent/Executive Magistrate to cancel the bond executed by the petitioner and sent him to jail to undergo the remaining period of sentence. Since the petitioner was detained in prison, he was produced for enquiry on P.T warrant and an enquiry was conducted on 30.03.2017. On that date, the first respondent/Executive Magistrate, after examining all the witnesses, passed an order cancelling the bond, and directed the second respondent to detain him in prison for the remaining period. Challenging the above said order, the present Criminal Revision Case has been filed.

3.I have heard Mr.L.M.Viji Boominathan, learned counsel appearing for the petitioner and Mr.C.Mayilvahan Rajendran, learned Additional Public Prosecutor, appearing for the respondent and perused the records carefully.

4.The learned counsel appearing for the petitioner would contend that the first respondent/Executive Magistrate, without giving sufficient opportunity to the petitioner to raise his objection, conducted an enquiry on 30.03.2017 and after recording the statement of the interested witnesses namely Sub Inspector of Police and Inspector of Police, passed the impugned order on the very same day, in violation of principles of natural justice. Even though the petitioner was produced before the Executive Magistrate for the enquiry, the copy of First Information Report and the statement of the witnesses were not furnished to him and he has also not been given any opportunity to defend his case. In order to substantiate his case, the learned counsel appearing for the petitioner has relied upon the following decisions of this Court.

(i) 2017 (2) LW (Crl) 37 [Selvam @ Selvaraj vs. The Executive Magistrate cum Deputy Commissioner of Police, (Law & Order, Crime & Traffic) Tiruppur & Another]; and



(ii) CDJ 2016 MHC 4709 [Balamurugan vs. State rep. by the Inspector of Police and another].

4. Per contra, the learned Additional Public Prosecutor appearing for the respondents would contend that admittedly, the petitioner has violated the bond executed by him. Hence, an enquiry was conducted by the first respondent and on that date, the petitioner was produced for enquiry on P.T. warrant and in his presence only, enquiry was conducted and Sub Inspector of Police and Inspector of Police have been examined by the Executive Magistrate. But the petitioner did not raise any objection for the enquiry. In the above circumstances, the Executive Magistrate, being satisfied that the petitioner has committed breach of bond and recorded proof of the same and passed the impugned order and hence, there is no illegality in the order passed by the Court below.

5. I have considered the rival submissions made on either side and perused the records carefully.

6. From the perusal of records, it could be seen that at the time of enquiry, the petitioner was confined in jail and he was produced before the Executive Magistrate for enquiry on 30.03.2017, on P.T. warrant. The Executive Magistrate, after recording the statement of the witnesses, come to the conclusion that the petitioner has committed breach of bond and passed the impugned order. However, from the order passed by the Executive Magistrate, it could be seen that no opportunity was given to the petitioner to raise his objections. It is an issue, involving the personal liberty of the petitioner and it is expected that the Executive Magistrate should follow the principles of natural justice by giving sufficient opportunity to the petitioner to defend his case. Apart from that, from the perusal of the order, it could be seen that the Executive Magistrate has not recorded his subjective satisfaction and he has only recorded the statement of the witnesses and passed the impugned order. In similar circumstances, this Court in **2017 (2) LW (Cr1) 37 [Selvam @ Selvaraj vs. The Executive Magistrate cum Deputy Commissioner of Police, (Law & Order, Crime & Traffic) Tiruppur & Another]** at paragraph - 46 has held as follows:

"46. As has been rightly held by the learned Judge in the Judgment cited supra, since it is a personal liberty of an individual which is to be infringed, it can only be done under the procedure established under law within the meaning of Article 21 of the Constitution of India. Therefore, if there is any iota of violation of such procedure, as intended or contemplated under Article 21 of the Constitution, then certainly it can only be treated as violation of Article 21 of the Constitution



and on that ground itself, such order of detention made u/s 122 (1) (b) of Cr.P.C would be vitiated. Here in the case in hand, though the petitioner admittedly, was present before the first respondent, there was no mentioning about his presence and the opportunity of being heard given to him by the first respondent, in the impugned order. Since there is no whisper about the presence of the petitioner as well as the opportunity given to him in the order, the further course of action of supplying the documents and getting views or reply from the petitioner/detenu, in this case, would not have happened. Moreover, it is not the definite case of the respondent that such an opportunity was given to the petitioner and such a procedure as contemplated, has been followed scrupulously, in this regard. In the absence of all these ingredients, as the order of detention made by the first respondent through the impugned order, will upset the personal liberty of the petitioner, as guaranteed under Article 21 of the Constitution, this Court has to construe the strict sense of non following of such procedure of being heard and the satisfaction of the Magistrate in this regard."

7.The above judgment is squarely applicable to the present case. Hence, I am inclined to set aside the impugned order.

8.In fine, this Criminal Revision Case is allowed and the impugned order passed in M.C.No.780 of 2016 by the Executive Magistrate/ Deputy Commissioner of Police, Law and Order, Madurai City, Madurai is set aside. The petitioner is directed to be released forthwith unless his detention is required in connection with any other case or proceedings.

Sd/-

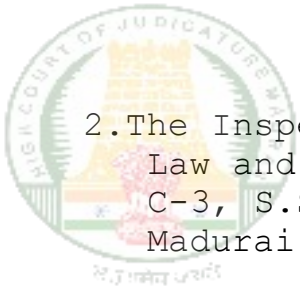
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

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



2.The Inspector of Police,
Law and Order,
C-3, S.S.Colony Police Station,
Madurai.

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

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

+ 1 cc TO Mr.R.Alagumani , Advocate in SR No. 80773

vs

AE/SV MMS/SAR2/13.12.2017/5P/6C

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21.09.2017