



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)No.426 of 2017

M.Angala Eshwari : Petitioner/Accused's Wife

Vs.

1.The Executive Magistrate Cum
Deputy Commissioner of Police,
Law and Order,
Madurai City. : 1st Respondent

2.The State, Rep.by its,
The Inspector of Police,
B6 Jaihindpuram Police Station (L&O),
Madurai City. : 2nd Respondent / Complainant

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai. : 3rd Respondent

4.The Inspector of Police,
South Gate Police Station,
Madurai District. : 4th Respondent

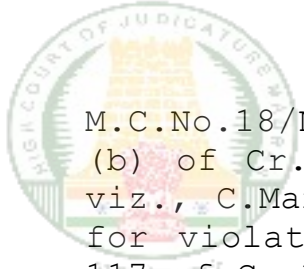
*(R4 impleaded vide order
dated 30.06.2017)

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C.,
praying to call for the entire records relating to the order of
the 1st respondent by his proceedings in M.C.No.18/Ne.Se.Na&Kaa.
Thu.Aaa/Ma.Maa/2016, dated 04.05.2017 and set aside the same as
illegal and allow the above Criminal Revision Petition, as prayed
for.

For Petitioner : Mr.L.Sabeer Mohamed
For Respondent : Mr.C.Mayilvahana Rajendran
Addl.Public Prosecutor

O R D E R

<https://hcservices.ecourts.gov.in/hcservices>
The present Criminal Revision is filed by the wife of the
detenue, challenging the impugned order of the first respondent
passed on 04.05.2017, by his proceedings in

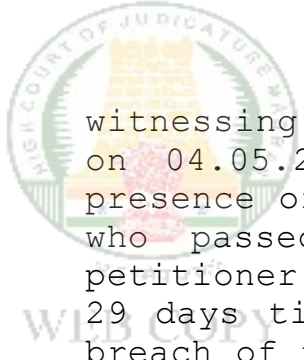


M.C.No.18/Ne.Se.Na&Kaa.Thu.Aaa/Ma.Maa/2016, under Section 122(1) (b) of Cr.P.C., ordering to detain the husband of the petitioner viz., C.Mani @ Blade Mani @ Manivannan / detinue till 01.03.2018, for violation of the bond executed by the detinue under Section 117 of Cr.P.C., for one year, to the value of Rs.1,00,000/- with 2 sureties on 02.03.2017.

2. The Criminal Revision is taken up for final disposal at the admission stage itself, with the consent of either side.

3. Admittedly, on the basis of the report submitted by the Inspector of Police, South Gate Police Station, Madurai / the 4th respondent herein, in view of the registering the case in Crime No.66 of 2017, under Section 110 Cr.P.C., the first respondent herein initiated the proceedings under Section 110(e) of Cr.P.C., in which, the husband of the petitioner was directed to execute a bond for one year, to the value of Rs.1,00,000/-, for maintaining the peace during that period, by issuing a show-cause notice under Section 111 of Cr.P.C., dated 28.02.2017 and on appearance of the husband of the petitioner before the first respondent. The above said bond was executed on 02.03.2017, by the husband of the petitioner with 2 sureties. While the above said bond was in force, the 2nd respondent registered an FIR in Crime No.630 of 2017, under Section 392 r/w 506(ii) of IPC., against the husband of the petitioner and was arrested and produced before the learned Judicial Magistrate No.4, Madurai and was remanded to Judicial custody on 18.04.2017. Hence, the 4th respondent sent a report to the first respondent to initiate action under Section 122 of Cr.P.C., against the husband of the petitioner, for the breach of the bond executed involving in a criminal case registered by the 2nd respondent, while the said bond is in force.

4. After receipt of the above report from the 4th respondent, the 1st respondent has issued a proceedings, dated 02.05.2017 to the husband of the petitioner, who is in judicial custody before the 3rd respondent herein, for initiating proceedings under Section 120(1)(b) Cr.P.C., and the said proceedings was also served on the same date itself upon the husband of the petitioner / remand prisoner, in Crime No.630 of 2017, on the file of the 2nd respondent, by the 3rd respondent. On the same date, the 3rd respondent was also directed to produce the husband of the petitioner before the 1st respondent on 04.05.2017, for conducting an enquiry under Section 122(1)(b) of Cr.P.C. Then, the husband of the petitioner was produced on 04.05.2017, under P.T.Warrant, before the 1st respondent, who also issued summons to the witnesses for their appearance on 04.05.2017. Five Witnesses ie., the Inspector of Police, B6 Jaihindpuram Police Station (L&O), Madurai City, who investigated the case in Crime No.670 of 2017, the Inspector of Police, who registered the above said FIR; the Complainant, who gave the complaint against the husband of the petitioner in the above case and other two persons



witnessing the occurrence on 18.04.2017 respectively were present on 04.05.2017 and their statements were also recorded in the presence of the husband of the petitioner by the first respondent, who passed the impugned order directing the husband of the petitioner to be detained for the remaining period of 9 months and 29 days till 01.03.2019, under Section 122(1)(b) of Cr.P.C., for breach of terms of the bond, dated 02.03.2017, executed by him and the husband of the petitioner was sent to the 3rd respondent for detention in prison and the husband of the petitioner, as detainee, is now in prison.

5. The learned counsel appearing for the Revision Petitioner would submit that no opportunity was given to the detainee before passing the impugned order to defend the allegations made by the 2nd respondent, which violates his right guaranteed under the Constitution of India and the first respondent passed the impugned order without any proof of breach; that without passing preliminary order under Section 111 of Cr.P.C., or serving it upon the husband of the petitioner / detainee. The impugned order, bye-passing the proceedings, was passed by the first respondent; that the preliminary order under Section 111 of Cr.P.C., and the order under Section 117 of Cr.P.C., were passed in respect of execution of the bond on the same date, without following the procedures contemplated under Sections 112 to 116 of Cr.P.C., and the husband of the petitioner was forced to execute the bond without summoning or examining any witnesses; that nowhere in the impugned order is stated regarding the satisfaction of the respondent in passing the impugned order and the first respondent has no power to pass the impugned order as Executing Magistrate, since as per Section 20(5) of Cr.P.C., it gave power only to the Commissioner of Police, whereas, the impugned order was passed by the Deputy Commissioner of Police and the impugned order of the first respondent is on the face of it illegal, erroneous and contrary to the procedures contemplated under the Cr.P.C., and the first respondent has passed the impugned order mechanically, without giving any opportunity to the husband of the petitioner and hence, the impugned order passed by the first respondent herein is untenable and unsustainable in law and the same is liable to be dismissed. The learned counsel, in support of his contentions, has relied on the Judgment of the Principal Bench of this Court in *Selvam @ Selvaraj Vs. Executive Magistrate-cum-Deputy Commissioner of Police (Law and Order, Crime and Traffic), Tiruppur City*) and Another reported in (2017 (3) MLJ (CrI.) 430).

6. The learned Additional Public Prosecutor appearing for the respondent would submit based on the counter statements filed by the respondents 1 & 2 herein, that the Director General of Police, Tamil Nadu, has issued a Circular Memorandum in R.C.No.225463/A&R-2/2014, dated 19.06.2014, appointing the Deputy Commissioner of Police, Law and Order in Tamil Nadu, as Executive

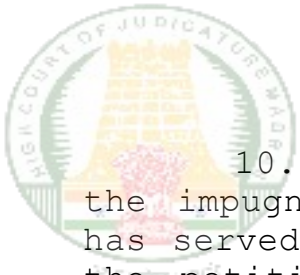


Magistrate, to exercise the powers under Sections 107 to 110 Cr.P.C., as per G.O.Ms.No.181, Home (Cts VI-A) Department, dated 25.02.2014 and hence, the impugned order passed by the first respondent herein is sustainable in the eyes of law and the first respondent has followed all the procedures laid in the Criminal Procedure Code and considered all the materials evidence and after coming to the subjective satisfaction only, passed the present impugned order; that the husband of the petitioner is the history sheeted rowdy on the file of the 2nd respondent Police Station, as numbered as 316 of 2009; that after issuing Notice, dated 28.02.2017 to the husband of the petitioner and conducting enquiry on 02.03.2017, the first respondent directed the husband of the petitioner to execute the bond and he also executed the bond to keep the peace or maintaining good behavior for a period of one year upto 01.03.2018 vide M.C.No.18 of 2017, dated 02.03.2017 and only after violation of the bond condition by the husband of the petitioner, the impugned order was passed on 04.05.2017, after considering the all facts and circumstances.

7. He would further submit that after issuing the show-cause notice, the order under Section 111 Cr.P.C., was passed and an enquiry was also conducted under Section 116 of Cr.P.C., on 02.03.2017 and the order under Section 117 of Cr.P.C., was made on the same date and the first respondent followed all the procedures and Rules laid down in the Procedural Code come to the subjective satisfaction, passed the preliminary as well as the present impugned order. The records relating to passing of the impugned order are filed by the respondent.

8. Perused the materials available on records. Heard and considered the rival submissions made by either side.

9. The Revision is filed challenging the impugned order of detention passed by the 1st respondent against the husband of the petitioner / detainee, on the basis of the recommendations made by the Sponsoring Authority, who is the 4th respondent herein, for initiating the proceedings under Section 122 of Cr.P.C., for breach of the terms of the bond executed by him and as per Section 117 Cr.P.C., on the basis of the report made by the 2nd respondent for initiating the proceedings under Section 110 of Cr.P.C., by the 1st respondent. The detainee / husband of the petitioner has not challenged the order passed by the first respondent under Section 117 Cr.P.C., prior to the passing of the impugned order under Section 122 of Cr.P.C., Hence, the points in issue in this Revision is only confined to passing of the impugned order, dated 04.05.2017 of the first respondent for detention under Section 122 (1) (b) of Cr.P.C. The question of execution of bond under Section 117 Cr.P.C., does not arise in this Revision for consideration as the bond was executed forcibly from the husband of the petitioner and also without following the procedures mentioned in the Code of Criminal Procedure.



10. It is admitted in this case that prior to passing of the impugned order under Section 122 Cr.P.C., the 1st respondent has served the proceedings, dated 02.05.2017, upon the husband of the petitioner on 03.05.2017, through the 3rd respondent herein subjecting the husband of the petitioner for the proceedings under Section 122(1)(b) of Cr.P.C., The contention of the petitioner is that such proceedings is only an intimation and not a show-cause notice issued by the first respondent.

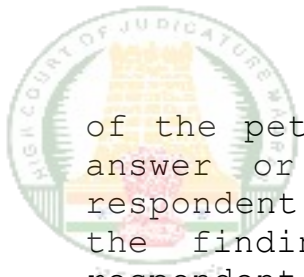
11. In contra, the respondents contended that the proceedings issued on 02.05.2017 is a show-cause Notice for initiating enquiry under Section 122(1)(b) of Cr.P.C. by the 1st respondent. On perusal of the proceedings, dated 02.05.2017, issued by the first respondent it is therein stated that the bond executed under Section 117 Cr.P.C., in respect of the Crime No.630 of 2017 of the 2nd respondent herein was breached / violated by the husband of the petitioner and such bond was cancelled and in addition to that, he is going to be subjected to the proceedings under Section 122(1)(b) of Cr.P.C., The contents of the said proceedings, dated 02.05.2017, reveal the fact that the first respondent has predetermined the issue of violation and cancellation of the said bond, without conducting any enquiry or examining any witnesses on 02.05.2017 itself. It is mentioned as follows:-

—இந்நடுவர் மன்றத்தில் நீர் கு.வி.மு.ச பிரிவு 117 – ன் படி தாக்கல் செய்த நன்னடத்தை பிணைய பத்திரத்தை மீறியுள்ளீர். எனவே உமது நன்னடத்தை பிணைய பத்திரத்தை ரத்து செய்யப் படுவதுடன் சட்டப் பிரிவு 122(1) (ஆ) கு.வி.மு.ச – ன் படி நடவடிக்கைக்கு உட்படுத்தப்பட உள்ளீர் என இதன் மூலம் தெரிவிக்கப் படுகிறது.

இச்செயல் முறை ஆணை பெற்றுக்கொண்டு ஒப்புதல் அளிக்கவும்.”

12. No explanation is called for the violation of the terms of the bond from the husband of the petitioner and cancellation. No hearing date for conducting the enquiry is also mentioned in the said proceedings, dated 02.05.2017. But the first respondent issued summons to five witnesses on 02.05.2017 itself fixing the date of enquiry on 04.05.2017. The said proceedings, dated 02.05.2017 does not disclose the issuance of summons for witnesses and their examinations on 04.05.2017 by the first respondent herein.

13. The proceedings, dated 02.05.2017, issued by the first respondent and served upon the husband of the petitioner in jail is not properly worded for conducting and enquiring or examination of witnesses on 04.05.2017. Hence, such proceedings could not be called as show-cause notice, as contended by the respondent herein in this case. Issuance of such proceedings, dated 02.05.2017, is a pre-determination of cancellation of bond for the alleged violation of the terms without conducting the enquiry on the same date itself by the first respondent herein. In fact, the husband

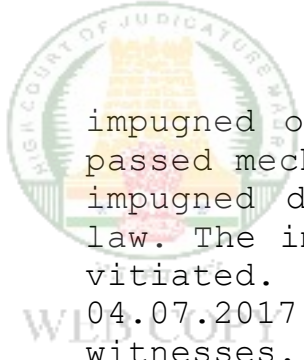


of the petitioner was not in a position to give any satisfactory answer or defence against such action proposed by the first respondent herein under Section 122(1)(b) of Cr.P.C. Nowhere in the findings or in the conclusion arrived at by the first respondent herein in the impugned detention order it has been mentioned that the husband of the petitioner has appeared before the first respondent and an opportunity of being heard was given to him by supplying the materials including the report of the 4th respondent / Inspector concerned. No documents or materials including the copy of the report of the Inspector of Police requesting the first respondent to initiate action under Section 122(1)(b) of Cr.P.C., was given to the petitioner.

14. The impugned detention order reveals that five witnesses were examined in the presence of the husband of the petitioner, who was produced on 04.05.2017 under P.T.Warrant from the Central Jail and the husband of the petitioner did not cross-examine those witnesses on the same date and the husband of the petitioner did not produce any evidence, documents and also any explanation and as per the statements of the witnesses and records breach of terms of bond, dated 02.03.2017, was proved beyond reasonable doubt and detention order was passed to undergo the detention for the balance period of 9 months and 29 days on 04.05.2017 itself. Under Article 21 of Constitution of India, no one shall be deprived of his life and liberty, except by procedures 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 the prescribed procedures. The procedures must be a fair, reasonable, not unjust, not arbitrary and not whimsical (1978 AIR SC 597, Meneka Gandhi Vs. Union of India).

15. In this case on hand, supplying the documents and getting the views or reply from the husband of the petitioner / detainee would not have happened prior to passing of the impugned order. An opportunity of hearing must be given to the petitioner. When the detainee is present before the Magistrate, he should be supplied with materials, which are going to be utilized against him for arriving at a just conclusion that he has violated the terms of the bond. Since the order of detention made by the Executive Magistrate by cancelling the bond under Section 122(1)(b) of Cr.P.C., is an order without charge, without trial and without judgment, the same cannot be without due procedures to be followed in this regard. Since it is a personal liberty of an individual, which is to be infringed it can only be done under the procedures established under law within the meaning of Article 21 of the Constitution of India.

<https://hcservices.ecourts.gov.in/hcservices> per Section 122(1)(b) of Cr.P.C., the Executive Magistrate must record his grounds of satisfaction and he must say whether sufficient cause has been established. On perusal of the



impugned order, he did not do so. The detention order has been passed mechanically. It is complete non-application of mind. The impugned detention order has not been passed in accordance with law. The impugned order suffers from legality, propriety and it is vitiated. No sufficient opportunity was given to the detenu on 04.07.2017 or prior to that to go through the statements of witnesses. No materials was furnished to face the enquiry conducted by the first respondent to the detenu prior to passing of the impugned order. The previous cases against the detenu referred to by the learned Additional Public Prosecutor at the time of hearing this Revision is outside the scope of the enquiry under Section 122(1)(b) of Cr.P.C. Previous cases are also not mentioned in the impugned order. The impugned order is passed only on the basis of the report submitted by the 4th respondent and the statements of the witnesses. This Court finds in the impugned order that there is no subjective satisfaction of the Executive Magistrate / first respondent to conclude the violation of the bond condition and also for the detention of the detenu.

17. In the result, the Criminal Revision is allowed and the impugned order, dated 04.05.2017 passed by the first respondent is set aside. The husband of the petitioner / detenu shall be set at liberty forthwith, if his further detention is no longer required in connection with any other case or proceedings pending against him.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

- 1.The Executive Magistrate Cum
Deputy Commissioner of Police,
Law and Order,
Madurai City.
- 2.The Inspector of Police,
B6 Jaihindpuram Police Station (L&O),
Madurai City.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- 4.The Inspector of Police,
B6 Jaihindpuram Police Station,
Madurai District.



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

COPY TO:

The Record Keeper,
Criminal Record Section,
Madurai Bench of Madras High Court,
Madurai.

Crl.RC(MD)No.426 of 2017

Dated:- 19.12.2017

MPK

JM/SV MMS/SAR 1/19.12.2017/8P/7C