



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C (MD) No.446 of 2017

and

Cr1.M.P(MD)No.4664 of 2017

Karuvayan @ Selvakumar

.. Petitioner

Vs.

1. The Executive Magistrate/
Deputy Commissioner of Police,
Law and Order,
Madurai City, Madurai.
2. The Inspector of Police,
Law and Order,
B3, Theppakulam 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 - 600 009.

(The respondents 3 & 4 are deleted
vide order dated 12.07.2017).

... Respondents

Petition filed under Sections 397 read with 401 Cr.P.C, to call for records connected with M.C.No.860/ந.செ.ந & கா.து.ஆ/ம.மா/2016 dated 18.11.2016 on the file of the first respondent and set aside the same.

For Petitioner : Mr.R.Alagumani.

For RR - 1 & 2 : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor.

ORDER

This Criminal Revision Case has been filed challenging the order passed by the first respondent under Section 122(1) (b) r/w 117 Cr.P.C., for violating the bond executed by him.



2. Earlier, a proceeding under Section 110 Cr.P.C., was initiated against the petitioner by the first respondent in Crime No.1660 of 2015 and the petitioner was directed, by the order dated 25.10.2016, to execute a bond for a sum of Rs.1,00,000/- and also to maintain good behaviour for one year. After executing the bond, the petitioner has involved in another criminal case in Crime No.1809 of 2016, which was originally registered under Section 174 Cr.P.C., subsequently altered into Section 302 IPC, wherein the petitioner has been shown as sole accused. In the above circumstances, a notice was issued to the petitioner under Section 122(1)(b) Cr.P.C., for cancelling the bond executed by the petitioner. Thereafter, the first respondent by an order dated 18.11.2016 passed the impugned order cancelling the bond and directed to detain the petitioner in prison upto 24.10.2017. Challenging the same, the present Revision Case has been filed.

3. Heard Mr.R.Alagumani, the learned for the petitioner and Mr.C.Mayilvahan Rajendran, learned Additional Public Prosecutor for the respondents 1 and 2.

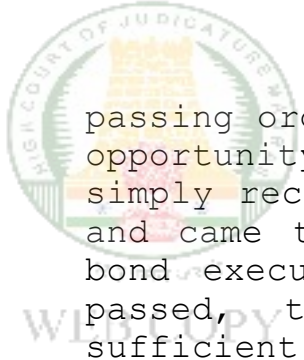
4. The learned counsel for the petitioner undertakes to delete the respondents 3 and 4 from the case, since they are not necessary party in the case. Hence, the respondents 3 and 4 are deleted from the case.

5. The learned counsel appearing for the petitioner would submit that the first respondent without conducting proper enquiry and without giving proper opportunity, has passed the impugned order. Even at the time of executing bond under Section 117 Cr.P.C. the petitioner has not been given sufficient opportunity and no enquiry was conducted as contemplated under Section 116 Cr.P.C. Even the earlier order passed under Section 111 Cr.P.C. was not communicated to the petitioner. Hence, the present Criminal Revision Case has been filed, challenging the impugned order, on the ground of violation of principles of natural justice.

6. Per contra, the learned Additional Public Prosecutor submitted that the petitioner after executing bond, has involved in another criminal case and a case has been registered for an offence under Section 302 IPC and the same is pending. Under the said circumstances, the petitioner has breached the bond executed by him. It is further submitted that before passing the order under Section 122(1)(b) r/w 117 Cr.P.C., enquiry was conducted and the petitioner was produced before the Executing Magistrate on PT warrant and after conducting proper enquiry, the impugned order has been passed. Hence, there is no violation of principles of natural justice.

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

8. From the perusal of records, it could be seen that nothing is stated in the impugned order as to whether the petitioner has been produced before the first respondent before



passing order for enquiry and whether enquiry was conducted and an opportunity was given to the petitioner. The Executing Court has simply recorded the report submitted by the Investigating Officer and came to the conclusion that the petitioner has breached the bond executed by him. Hence, it shows that the order has been passed, total non application of mind and without giving sufficient opportunity to the petitioner to defend his case.

9. In similar circumstances, this Court in CrI.R.C (MD) No.535 of 2016 has held at paragraph - 48 as follows:

"The said detention order does not show whether the revision petitioner was produced before the detaining authority/2nd respondent and whether he has participated in the enquiry. Whether his views were considered. Whether the petitioner has produced any materials. The impugned order is simply duplicating the report of the sponsoring authority/1st respondent. In para 4, the second respondent referred to the several past cases registered as against the petitioner, his earlier detention under Goondas Act. It is irrelevant for the purpose of a detention under Section 122(1)(b) Cr.P.C. It is concerned with the allegation whether the petitioner has breached the security bond executed by him on 09.06.2016. Again referring the past events is outside the scope of an enquiry under Section 122(1)(b) Cr.P.C. However, the second respondent has referred to the past cases, which are also not in proximity on point of time to the present enquiry. The second respondent has simply read the report of the sponsoring authority/1st respondent and in a stray sentence he says that it is necessary to detain him."

10. The above said decision is squarely applicable to the facts of the present case. Hence, considering the facts and circumstances of the present case and also following the decision cited supra, this Court is inclined to set aside the order passed by the Court below.

11. In fine, this Criminal Revision Case is allowed. The order dated 18.11.2016 passed in M.C.No.860/ந.செ.ந.கா.து.ஆ/ம.மா/2016 is set aside and the petitioner is ordered to be set at liberty forthwith, if his further detention is not required in connection with any other case or proceedings. Consequently, CrI.MP(MD) No.4664 of 2017 is closed.

Sd/-

Assistant Registrar(CS-III)



To

1. The Executive Magistrate/
Deputy Commissioner of Police,
Law and Order,
Madurai City, Madurai.
2. The Inspector of Police,
Law and Order,
B3, Theppakulam 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.
5. The Home Secretary,
State of Tamil Nadu,
Secretariat, Fort. St. George,
Chennai-9.

Crl.R.C (MD) No.446 of 2017
12.07.2017

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SDS/SKN:RSK/SAR 2/13.07.2017/4P/6C