



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE B.GOKULDAS

Crl.R.C. (MD).No.48 of 2017

Sundar

.. Petitioner

Vs.

- 1.Executive Magistrate,
Deputy Commissioner of Police (L&O),
Tirunelveli City.
 - 2.The Inspector of Police (L&O),
Petttai Police Station,
Tirunelveli.
 - 3.The Superintendent,
Palayamkottai Central Prison,
Tirunelveli.
- .. Respondents

Prayer:- Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C. to call for the records relating to the proceedings in E.M.C.No.5/2016, dated 22.10.2016, on the file of the 1ST respondent and quash the same.

For Petitioner :Mr.K.Muthumalai

For Respondents :Mrs.S.Prabha

Government Advocate (Crl. Side)

Orders Reserved on	30.01.2017
Orders Pronounced on	01.02.2017

ORDER

The revision petitioner, who is alleged to have breached the bond executed by him for keeping peace and good behaviour and who has been jailed, vide order of the Executive Magistrate and Deputy Commissioner of Police (L&O), Tirunelveli City/1st respondent in E.M.C.No.5/2016, dated 22.10.2016, has filed this criminal revision petition.

2. According to the petitioner on the basis of the case registered by the second respondent against him in Crime No.54 of 2016 under Section 110 Cr.P.C., an order has been passed under



Section 117 Cr.P.C. by the first respondent on 09.02.2016 for maintaining good behaviour for 1 year with a bond for Rs.20,000/-.

3. When the matter stood thus, the first respondent on 03.10.2016 issued a show cause notice to the petitioner in (EMC) No.05/Sec/Pro/DC.L&O/Tin-c-/2016 intimating that the petitioner breached the bond executed under Section 117 Cr.P.C. Therefore, proceedings under Section 122(1)(b) of Cr.P.C. would be initiated against the petitioner, since the petitioner was involved in another case in Crime No.44 of 2016, under Section 6 of POSCO Act, 2012 and Section 506(ii) IPC on the file of Pettai Police Station. Further, the second respondent made a request with the first respondent for detaining the petitioner in Central Prison, Palayamkottai, by invoking proceedings u/s 122(1)(b) of Cr.P.C. Pursuant to the said request, the first respondent passed the impugned order cancelling the bond and detained the petitioner till the expiry of the bond period, which expires on 08.02.2017. Hence, the petitioner is before this Court for the relief as stated earlier.

4. The learned counsel for the petitioner submitted that the impugned order does not show application of mind by the Executive Magistrate. The Executive Magistrate does not satisfy himself by referring to the materials produced before him and he did not record the grounds of proof based upon which the detention order under Section 122(1)(b) Cr.P.C., has been passed. The impugned order is vitiated. It has not been passed in proper manner. It is unsustainable in law. The first respondent has not followed the mandatory procedures. Under such a vitiated order, liberty of a person cannot be taken away. In support of his contention the learned counsel for the petitioner has relied on the following judgments of this Court:-

1. 2016-2-L.W. (Crl.) 493 (Murali @ Ponnuchamy v. The Sub Divisional Executive Magistrate and Assistant Collector Sivakasi & Anr)
2. Cr10.P. (MD).Nos.13878 of 2015, etc., batch dated 29.07.2015

5. The learned Government Advocate (Criminal Side) contended that in exercise of its said power under Section 20(1) Cr.P.C. the Government have passed G.O.Ms.No.181 Home (Cts VIA) Department, dated 25.02.2014, appointing Deputy Commissioner of Police (Law and Order) in certain Cities such as Madurai, Coimbatore, Tiruchirappalli, Tirunelveli, Salem, Tiruppur as Executive Magistrates to exercise powers under Sections 107 to 110 Cr.P.C and also defined their local jurisdiction under Section 22(1) of Cr.P.C. in exercise of his such power, the first respondent, namely the Deputy Commissioner of Police (Law and Order), Tirunelveli City, has passed the impugned order of detention against the petitioner and it is within his jurisdiction. Hence, she prays for dismissal of this petition.



6. I have carefully considered the rival submissions made by the learned counsel on either side and also perused the materials available on record.

7. The issue in question is already decided by this Court in more than one decision. It is useful to extract paragraph 17 of the order reported in 2016-2-L.W. (Cr1.) 493 (cited supra) hereunder:

"As we have already stated, without a charge, without evidence and without trial, a person's liberty has been taken away and he has been jailed for 3 years under Section 122(1)(b) Cr.P.C. So, the Executive Magistrate must be very serious of this matter. In a causal manner, personal liberty of a person has been curtailed. 1st respondent is bound to follow the law. There cannot be compromise with law, more particularly, when it is concerned with the liberty of a person."

The facts of the present case is also squarely applicable to the above case. The other decision of this Court in Cr10.P.(MD). Nos.13878 of 2015, etc., batch dated 29.07.2015 is also applicable to the case on hand.

8. A perusal of the impugned order would disclose that the first respondent did not record the grounds of his satisfaction in the impugned order. Therefore, the detention order has been passed mechanically without following the procedure mandate under Section 122 Cr.P.C.

9. In the light of the above discussion and decisions, the criminal revision is allowed and the impugned order of detention passed by the first respondent in E.M.C.No.5/2016, dated 22.10.2016 is set aside and the Superintendent, Palayamkottai Central Prison, Tirunelveli, the third respondent, is hereby directed to set at liberty the petitioner forthwith if his further detention is no longer required in connection with any case or proceedings.

SD

ASST REGISTRAR (AE)

TRUE COPY

SUB ASST REGISTRAR

jikr

To

1. Executive Magistrate,
Deputy Commissioner of Police (L&O),
Tirunelveli City.

2. The Inspector of Police (L&O),
<https://hcservices.ecourts.gov.in/hcservices/>
Pettai Police Station,
Tirunelveli.



3.The Superintendent,
Palayamkottai Central Prison,
Tirunelveli.

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

1CC TO MR. K. MUTHUMALAI, ADVOCATE SR: 5389

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