



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20/07/2017

CORAM :

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C.(MD) No.518 of 2017

and

CrI.M.P(MD)No.5973 of 2017

Athirajan

... Petitioner

Vs.

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

2.The Sub Inspector of Police,
Law and Order, Sellur Police Station,
Madurai.

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

... Respondents

Petitions filed under Sections 397 read with 401 Cr.P.C,
to call for the records connected with the
M.C.No.880/நி.செ.ந.கா.கு.உ/ம.மா/2016 dated 15.03.2017 on the file of
the respondent No.1 and set aside the same.

For Petitioner

: Mr.R.Alagumani

For Respondents

: Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor.

Reserved on : 11.07.2017

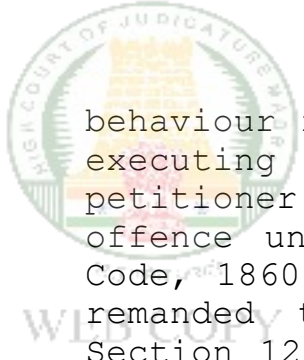
Pronounced on : 20.07.2017

ORDER

Challenging the order passed by the first respondent under
Sections 122(1)(b) read with Section 117 Cr.P.C, the present
Criminal Revision Case has been filed.

2.The case of the petitioner in brief is as follows:-

According to the petitioner, a proceeding under Sections
110 and 117 of the Code of Criminal Procedure, 1973 (for short
"the Code") has been initiated against the petitioner in Crime
No.2093 of 2016 on the file of D2, Sellur Police Station, Madurai
City and the petitioner has also executed a bond for good



behaviour for a period of one year. While so, on 01.11.2016, after executing the bond, a case has been registered against the petitioner in the same police station in Crime No.87 of 2017 for offence under Sections 294(b), 324, 506(ii) of the Indian Penal Code, 1860 on 12.01.2017 and on the same day, he was arrested and remanded to judicial custody. Thereafter, a proceeding under Section 122(1)(b) of the Code was initiated by the jurisdictional Court for breach of the bond executed by him and after serving summons on the petitioner, an order has been passed cancelling the bond and he was directed to be detained in prison until the expiry of the bond period executed by him. Challenging the same, the present Criminal Revision Case has been filed.

3.I have heard Mr.R.Alagumani, learned counsel for the petitioner and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor for the respondents.

4.Learned counsel for the petitioner would contend that before passing the impugned order under Section 122(1)(b) of the Code, the first respondent has not followed the mandatory procedure contemplated under the Code and no fair opportunity was given to him to defend his case. Even though he was produced on P.T.warrant at the time of enquiry, he was not permitted to cross examine the witnesses and the enquiry was conducted on 15.03.2017 on the very same date, the first respondent passed the impugned order which is in violation of mandatory requirement under Section 122 of the Code. Learned counsel for the petitioner would further contend that merely because FIR has been registered against the petitioner, it cannot be a ground to invoke the provision under Section 122(1)(b) without verifying the fact that whether the complaint given against the petitioner is true or false and in the instant case, a false complaint has been given against the petitioner and only based on the same, the case has been registered and subsequently, the impugned order has been passed only to detain him in prison with a mala fide intention which is non-est in the eye of law.

5.Per contra, Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor for the respondents would submit that earlier, the petitioner has executed a bond and violating the same, he has involved in another crime and hence, appropriate enquiry was conducted by the respondents and the petitioner was detained in prison has been produced before the first respondent on the date of enquiry and in his presence, all the witnesses including the complainant in the subsequent crime and the Inspector of Police was also examined. During the enquiry, the petitioner was not willing to cross examine the above said witnesses and he has also not produced any witnesses. In the above circumstances, the first respondent, upon consideration of the entire materials and due application of mind, passed the order impugned in the present Criminal Revision Case.

<https://hcservices.ecourts.gov.in/hcservices/>

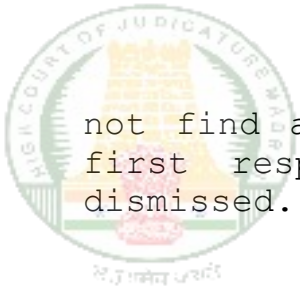
6.I have considered rival submissions and perused the materials available on record.



7. The first and foremost contention of the learned counsel for the petitioner is that the procedure contemplated under Section 122 of the Code has not been followed in this case. From the perusal of the records, it could be seen that admittedly, the petitioner has executed a bond on 01.11.2016 for good behaviour for a period of one year. Subsequently, a case has been registered against him on 12.01.2017 based on the complaint given by one Ambiga alleging that on 11.01.2017 at about 10.00 p.m, the petitioner waylaid the complainant's son and quarrelled with him. The defacto complainant has questioned the petitioner and at that time, the petitioner abused the defacto complainant in filthy language and attacked her with aruval and also attacked his son in his shoulder and caused injury and they were taken to hospital and admitted as in-patient and based on the intimation received from the injured person, a case has been registered for the offence under Sections 294(b), 324, 506 (ii) IPC on the file of the respondent police, based on which the petitioner was arrested and remanded to judicial custody. Subsequently, based on a complaint given by the Inspector of Police, a proceedings under Section 122 (1)(b) of the Code, has been initiated and notice was properly served on the petitioner and he was produced before the Magistrate on 15.03.2017 and in his presence, the Sub Inspector of Police who has registered the complaint, the defacto complainant - Ambiga and one Kamayee who is daughter in law of the defacto complainant were examined by the Executive Magistrate. But when the petitioner was requested to cross examine the witnesses, he was not willing to cross examine them and he has also stated that he has no witness to examine on his side. Since the petitioner did not want to cross examine the witnesses and after considering the material available on record, the impugned order has been passed.

8. From the above materials, it could be seen that appropriate opportunity was given to the petitioner before passing the order impugned in this revision. It cannot be contended that the order has been passed in violation of the mandatory requirement under Section 122 of the Code.

9. The next contention of the learned counsel for the petitioner is that mere filing of FIR is not sufficient to initiate proceedings under Section 122 of the Code. Admittedly, there is a complaint against the petitioner and at this stage, the Executive Magistrate cannot go into the question whether the complaint is true or false and the learned Magistrate is expected to see that whether there is any breach of bond executed by the petitioner. The defacto complainant and other witnesses also examined by the Executive Magistrate before passing the impugned order and the learned Magistrate has also applied his mind and satisfied that there is a breach of bond and hence, passed the order directing the petitioner to be detained for the remaining period. Hence, I do



not find any infirmity or illegality in the order passed by the first respondent. Accordingly, the Criminal Revision Case is dismissed. Consequently, CrI.M.P(MD)No.5973 of 2017 is closed.

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Sd/-

Assistant Registrar(AE)

Sub-Assistant Registrar

To

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

2.The Sub Inspector of Police,
Law and Order, Sellur 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.

+One cc to Mr.R.Alagumani, Advocate, SR.No.67207

sms

RL/6C/4P/JC/SAR1/2/8/2017

Order made in
CrI.R.C.(MD) No.518 of 2017
and
CrI.M.P(MD)No.5973 of 2017

20.07.2017