



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C(MD) .No.672 of 2017

and

CRL MP(MD)No.7655 and 7656 of 2017

Haroon Basha

... Petitioner

Vs.

1. The Executive Magistrate cum
Deputy Commissioner of Police,
Trichy City.

2. The Inspector of Police,
Gandhi Market Police Station,
Trichy.

... Respondents

Prayer : Criminal Revision Case filed under Section 397 and 401 Cr.P.C. to set aside the order passed by the Executive Magistrate cum Deputy Commissioner of Police, Trichy City in M.C.No.701 of 2017 dated 31.07.2017.

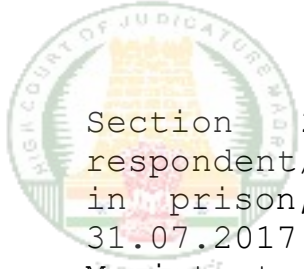
For Petitioner : Mr.G.Chandrasekar

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 111 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.1208 of 2016 on the file of the second respondent police station for the offence under Section 5 read with 7(3) of the Lottery Regulation Act read with 109 and 120(b) IPC. Thereafter, proceedings under Section 110 Cr.P.C., has been initiated by the Executive Magistrate in Crime No.155 of 2017 and the petitioner has also executed a bond on 13.06.2017 for maintaining good behavior for one year. While the above bond was in force, on 24.07.2017, the petitioner involved in another similar crime. Hence, a case has been registered by the second respondent in Crime No.903 of 2017 for the offence under Section 5 read with 7(3) of the Lottery Regulation Act. Since the petitioner has violated the bond executed by him, proceeding under



Section 211 Cr.P.C has been initiated by the first respondent/Executive Magistrate. Since the petitioner was detained in prison, he was produced for enquiry on P.T. warrant on 31.07.2017. On that date, the first respondent/Executive Magistrate, after examining the Sub Inspector of Police and two Constables attached to the respondent police, passed the 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.The learned counsel appearing for the petitioner would contend that the first respondent/Executive Magistrate without conducting proper enquiry and without giving an opportunity to the petitioner, after recording the statement of the interested witnesses namely Sub Inspector of Police and two Constables, passed the impugned order on the very same day, in violation of principles of natural justice and even though the petitioner was produced before the Executive Magistrate for an 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.

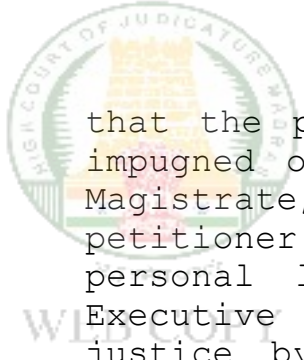
(i) 2017 (2) LW (Crl) 37 [Selvam @ Selvaraj vs. The Executive Magistrate cum Deputy Commissioner of Police, (Law & Order, Crime & Traffic) Tiruppur & Another]; and

(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 two Constables 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.

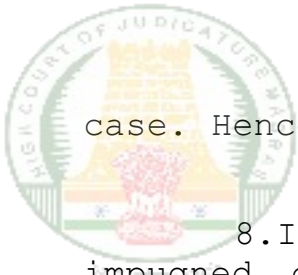
6.From the perusal of records, it could be seen that at the time of enquiry, the petitioner was confined in jail and he was produced before the Executive Magistrate for enquiry on 31.07.2017, on P.T. warrant. The Executive Magistrate, after recording the statement of the witnesses, come to the conclusion



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, 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.701 of 2017 by the Executive Magistrate cum Deputy Commissioner of Police, Trichy City is set aside. Consequently, CrI.MP(MD)Nos.7655 and 7656 of 2017 are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Executive Magistrate cum
Deputy Commissioner of Police,
Trichy City.
2. The Inspector of Police,
Gandhi Market Police Station,
Trichy.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Superintendent, Central Prison,
Trichy.

+1cc to Mr.G.Chandrasekar, Advocate Sr.No.76425

MJ

VB/RSK/SAR3/13/09/2017/4P/6C

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and
CRL MP(MD)No.7655 and 7656 of 2017
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