



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2017

CORAM:

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THE HONOURABLE MR.JUSTICE **B.GOKULDAS**

Cr1.R.C.(MD).No.805 of 2016 &
Cr1.M.P.(MD).No.12137 of 2016

A.Ithayathulla .. Petitioner / Accused

Vs.

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

.. Respondent/Respondent

2.The State, Rep by its,
The Inspector of Police,
B5 South Gate Police Station (L & O),
Madurai City.

.. Respondent/Complainant

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

.. Respondent/Respondent

4.The Inspector of Police,
C1, Theeder Nagar Police Station (L & O),
Madurai City.

.. Respondent/Respondent

(R4 impleaded vide order of this Court dated 19.12.2016 in
Cr1.M.P.(MD).No.12138/2016)

Prayer:- Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C. to call for the entire records relating to the order of the 1st respondent by his proceedings in M.C.No.971/Ne.Se.Na.& Ka.Thu.Aa/Ma.Maa/2016, dated 22.11.2016 and set aside the same as illegal and allow the above criminal revision petition as prayed for.

For Petitioner :Mr.I.Sabeer Mohamed

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

For Respondents :Mrs.S.Prabha
Government Advocate (Cr1. Side)



Orders Reserved on	19.01.2017
Orders Pronounced on	01.02.2017

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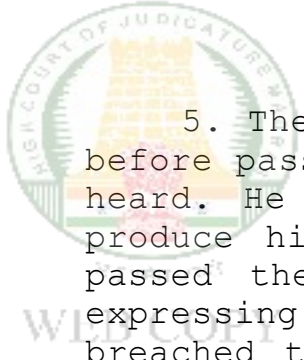
ORDER

Petitioner, who has been confined in Central Prison, Madurai, pursuant to the order dated 22.11.2016, passed by the first respondent, the Executive Magistrate cum Deputy Commissioner of Police, Law and Order, Madurai City, has filed this criminal revision case challenging the legality and propriety of the said order of detention.

2. The case of of the petitioner is that the Inspector of Police, Thilagar Thidal police Station, registered a case against him under Section 110(e) and (f) of Cr.P.C. in Crime No.925 of 2016, dated 16.11.2016. Thereafter, the Inspector of Police, Thilagar Thidal police Station, requested the first respondent to initiate proceedings against him under Section 110 Cr.P.C. Pursuant to the same, the first respondent initiated proceedings in M.C.No.971 of 2016, dated 17.11.2016. Subsequently, on the next day, order under Section 117 of Cr.P.C. was passed as it is necessary for keeping the peace or maintaining good behavior and directed the petitioner to produce two sureties with fine of Rs.5,000/- for bond for a period of one year, and the same was executed on the same day i.e. on 17.11.2016.

3. When the matter stood thus, the second respondent police registered yet another case against the petitioner on 18.11.2016 in Cr.No.988 of 2016 for the offence punishable under Sections 392 r/w 397 and 506 (ii) IPC. Pursuant to the same, the first respondent passed the impugned order dated 22.11.2016 alleging that the petitioner has breached the bond executed on 17.11.2016, hence the bond was cancelled and ordered to be detained upto 16.11.2017. Hence, the petitioner is before this Court for the relief as stated earlier.

4. The learned counsel for the petitioner submitted that as per Section 20(5) Cr.P.C. a Commissioner of Police alone can be given the power of Executive Magistrate. However, in the instant case, a Deputy Commissioner of Police has been given such a power. Therefore, the first respondent has no jurisdiction to pass orders under Section 111 Cr.P.C., and also order detention under Section 122(1)(b) Cr.P.C. He further contended that under Section 20(5) Cr.P.C. Government have no power to sub-delegate its power to a Deputy Commissioner of Police and the detention order passed under Section 122(1)(b) of Cr.P.C on 22.11.2016 cancelling the security bond dated 17.11.2016, and detaining the petitioner is devoid of merits.



5. The learned counsel for the petitioner also contended that before passing the said order of detention, the petitioner was not heard. He was not given any opportunity to file his counter or produce his materials and the first respondent has mechanically passed the detention order. He further contended that without expressing his subjective satisfaction whether the petitioner had breached the security bond, first respondent has simply accepted the report of the second respondent and passed the impugned order of detention. Hence, the petitioner prays to allow the revision. In support of his contention the learned counsel for the petitioner has relied on the following judgments;-

- 1.Criminal Appeal No.831/2016 (Arising out of Special Leave Petition (Crl.) No(s).6150/2016), vide order dated 02.09.2016
- 2.Crl.R.C.(MD).No.535 of 2016, order of this Court dated 02.09.2016.
- 3.Crl.O.P.(MD).No.14069 of 2016, order of this Court dated 18.08.2016

6. The learned Government Advocate (Criminal Side) filed counter affidavit and 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), Madurai, has passed the impugned order of detention against the petitioner and it is within his jurisdiction. Hence, she prays for dismissal of this petition.

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

8. The issue in question is already decided by this Court in more than one decision. It is useful to extract the relevant portion of order of this Court dated 02.09.2016, in Crl.R.C.(MD). No.535 of 2016 (cited supra)

"48. 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. ...

However, the second respondent has referred to the past cases, <https://hccservicescourts.gov.in/hccservices/> not in proximity on point of time to the present enquiry. The 2nd 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.

49. However, if we look at Section 122(1)(b) Cr.P.C. the Executive Magistrate must record his grounds of satisfaction and he must say whether sufficient cause has been established. But he did not do so. It is complete non-application of mind. The detention order has been passed mechanically. Under such circumstances, a person's personal liberty has been taken away. It is in violation of Article 21 of the Constitution of India and the principles laid down by the Hon'ble Supreme Court in Maneka Gandhi Vs. Union of India. (1978 AIR 597), wherein the Hon'ble Supreme Court has held that deprivation of one's personal liberty by a procedure, which is 'unreasonable', 'unfair', 'unjust', and 'arbitrary' is against law. The impugned detention order has not been passed in accordance with law. Such taking of/deprivation of a person's liberty will not stand the test of law. The impugned order suffers from legality, propriety and it is vitiated."

The facts of the present case is also squarely applicable to the above case. The other decision of this Court in CrI.O.P.(MD). No.14069 of 2016, dated 18.08.2016 (cited supra) is also applicable to the case on hand.

9. A perusal of the impugned order would disclose that there is no reference as to whether the detainee was heard and whether any reply was given by the detainee pursuant to the notice dated 22.11.2016. Further, 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.

10. 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 M.C.No.971/Ne.Se.Na.& Ka. Thu.Aa/Ma.Maa/2016, dated 22.11.2016 is set aside and the Superintendent of Prison, Central Prison, Madurai, 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. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Executive Magistrate Cum

<https://hcserv1.govtamilnadu.com> Commissioner of Police,

Law and Order,

Madurai City.

- 
- 2.The Inspector of Police,
B5 South Gate Police Station (L & O),
Madurai City.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- 4.The Inspector of Police,
C1, Theeder Nagar Police Station (L & O),
Madurai City.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr. I.SABEER MOHAMMED , Advocate, Sr.No:5460

jikr

MAS/PM-PN:2.1.2017:5P/7C

Pre Delivery order in
Crl.R.C.(MD).No.805 of 2016
01.02.2017