

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.1378 OF 2018

ORDER:

Challenging the notice, dated 23.02.2018, in M.C.No.B/69/2018 issued by the Executive Magistrate, Garidepally, Suryapeta district, wherein the petitioner is required to pay a sum of Rs.1,00,000/- in lieu of bond within a period of seven days from the date of receipt of a order, the present Criminal Revision Case is filed.

2. On 23.02.2018, the Executive Magistrate, Garidepally Mandal issued notice of forfeiture of Bond for good behaviour, whereunder it was stated as under:

“Whereas on 7.2.2018, you have entered into a bond of security for Good Behaviour for a period of one year and bound yourself in default thereof to forfeit the sum of Rs.1,00,000/- to the Government and whereas you have been committed a Breach of Bond by committing an offence under Section 7 (A) r/w 8 (e) of A.P. Prohibition Act (Telangana Adaption Order, 2015) in crime case No. 49/2018, Dt: 17-02-2018 of Prohibition & Excise Station, Huzurnagar.

You are hereby required to pay the said penalty of Rs.1,00,000/- or show cause within (07) days why you should not be adjudged for imprisonment until such bond period expires.”

3. Learned counsel for the petitioner mainly contends that as the said order came to be passed without conducting any enquiry as contemplated under Chapter VIII of Code of Criminal Procedure and therefore, the impugned order is illegal and incorrect. Learned counsel for the petitioner took the Court through Sections 107 to 122 Cr.P.C., to show that the order does not stand to the test of legal scrutiny.

4. Learned Public Prosecutor opposed the said application stating that there is no illegality in the order under challenge.

5. A reading of Sections 107 to 122 Cr.P.C., would show that the first requirement is that the Magistrate must pass an order in writing setting forth the substance of the information received, the amount of bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required under Section 112 Cr.P.C.

6. As per Section 113 Cr.P.C., the Magistrate shall then issue summon requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to be brought before him. Then the Magistrate must read over the order to the person and if he so desires, the substance of it must be explained to him. If there is need of immediate

arrest of the person, the learned Magistrate on the report of the Police Officer or upon other information may issue a warrant of arrest of the person. This action can only be taken if there is reason to fear that a breach of the peace cannot be prevented except by the arrest of the person. Along with the summons issued under Section 114 Cr.P.C., a copy of the order made under Section 112 Cr.P.C., must be sent and delivered to the person. Under Section 116 Cr.P.C., the Magistrate shall inquire into the truth of the said information.

7. In case of a person against whom the inquiry is made, should execute a bond with sureties and the Magistrate shall make the order with certain restrictions, which are enumerated under the provisions of Section 107 Cr.P.C. Under the first subsection, the Magistrate shall proceed to enquire into the truth of the information upon which he has so far acted and take such further evidence as may appear to be necessary. Sub-section (2) which contemplates enquiry into the truth or the information upon which the Magistrate acted so far and take further evidence as it may be necessary. It also contemplates enquiry as a trial and procedure applicable to the trial and recording of evidence in summons cases. The Magistrate has also got power to ask for a bond with or without sureties to keep peace and maintain good behaviour pending enquiry.

This power is used if the Magistrate considers that immediate measures are necessary for prevention of a breach of peace or disturbance of the public tranquillity or the commission of any offence or for the public safety. He does so, for reasons to be recorded in writing and if the person does not execute such bond, the Magistrate is empowered to detain him in custody till the bond is executed or the enquiry is concluded.

8. Section 117 Cr.P.C., deals with an order to give security. If, upon such inquiry, it is proved that it is necessary for keeping peace or maintaining good behaviour, as the case may be, the person in respect of whom an inquiry is to be made should execute a bond, with or without sureties and the Magistrate shall make an order, but no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under Section 111 Cr.P.C.

9. Sections 118 to 122 Cr.P.C., deal with various aspects namely with regard to Discharge of person, Contents of bond, power to reject sureties and imprisonment in default of security.

10. In the instant case, the impugned order came to be passed holding that the petitioner has committed breach of

bond by committing an offence punishable under Section 7 (A) read with 8 (e) of A.P. Prohibition Act, 1995 and as such the petitioner is required to pay the said penalty of Rs.1,00,000/- to show cause within seven days as to why he should not be adjudged for imprisonment until such bond period expires, without conducting any enquiry. The order does not anywhere indicate, opportunity being given to the petitioner to explain his case before the impugned order came to be passed. As the order under challenge came to be passed without conducting any proper enquiry, as required under the provisions referred to above, the same is liable to be set aside.

11. Accordingly, the Criminal Revision Case is allowed setting aside the order, dated 23.02.2018, in M.C.No.B/69/2018 passed by the Executive Magistrate, Garidepally Mandal, Suryapeta district and the Executive Magistrate, Garaidepally, shall proceed with the matter i.e., M.C.No.B/69/2018 after hearing the aggrieved person and in accordance with the procedure contemplated under law.

12. It is informed to the Court that for non-compliance with the orders passed in MC.No.B/69/2018 dt.23.2.2018, the petitioner herein has been arrested on 13.3.2018 and at present he is lodged in Chenchalguda Prison, Hyderabad.

13. Since the impugned proceedings are set aside, the petitioner shall be released on bail.

Miscellaneous Petitions, if any, pending in this revision shall stand closed.

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JUSTICE P.KESHA RAO

Date: 8.6.2018

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