

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2019

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANIDRA

CrI.RC.No.638 of 2019 and
CMP.No.8900 of 2019

Senguttuvan

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Petitioner

Vs

1.The Sub District Magistrate Cum
Revenue Divisional Officer,
Madhurantagam Taluk,
Kancheepuram District.

2. The Inspector of Police,
Madhurantagam Police Station,
Kancheepuram District.

Respondents

Prayer: This Criminal Revision Petition has been filed, under Section 397 read with 401 of Cr.PC, to set aside the order dated 15.05.2019, made in Na.Ka.No.727/2019/Aa, passed by the 1st respondent.

For Petitioner : Mr.Ilayaraja Kandhasamy

For Respondents : Mr.Mohamed Riyaz, APP

ORDER

- 1.This Criminal Revision Petition has been filed, against the order, dated 15.05.2019, made in Na.Ka.No.727/2019/Aa, committing the petitioner to prison to undergo imprisonment for 356 days, passed by the 1st respondent, by invoking Section 122 (1) (a) of Cr.P.C., for breach of bond executed under Section 110 of Cr.P.C., dated 03.04.2019, by the petitioner.
- 2.The case of the Prosecution is that since the petitioner was found to be indulging in criminal activities and rioting the Inspector of Police, Madhurantagam Police Station, the 2nd respondent had requested the 1st respondent to initiate proceedings under Section 110 of Cr.P.C., and thereby, the petitioner was asked to appear for an enquiry on 03.04.2019 and enquiry was conducted and that on the same day, the petitioner was made to execute a bond to maintain peace, for 346 days. Thereafter, within one month of execution of the bond, the

petitioner was found to have involved in Cr.No.132/2019, on 10.04.2019 and Cr.No.155/2019 in 20.04.2019 and that he was arrested and while he was in judicial custody, the proceedings under Section 122 of Cr.P.C., was initiated for breach of bond by the 2nd respondent and the petitioner was committed to prison to undergo imprisonment for a period of 346 days, by the impugned order, dated 15.05.2019. Challenging the same, the present revision has been filed.

3. The learned counsel for the petitioner would submit that the impugned order, cancelling the bond and convicting the petitioner to undergo ten months imprisonment under Section 122 (1) (b) of Cr.P.C., is illegal and arbitrary. Admittedly, the petitioner was summoned, to appear before the Executive Magistrate, on 03.04.2019 and without affording any opportunity, the petitioner was compelled to enter into a bond under Section 110 of Cr.P.C., without following the procedure contemplated under Chapter VIII of Cr.P.C. Thereafter, based on a false cases, the petitioner was arrested and while he was in Judicial custody, the petitioner was produced before the Executive Magistrate, on 15.05.2019 and on the same day without affording sufficient opportunity and without allowing the petitioner to avail the benefit of engaging an advocate, the order of conviction has been passed.
4. The learned counsel for the petitioner would rely on the Judgment of this Court in CrI.R.C.No.589/2019, dated 26.08.2019 and would submit that for violation for a bond that was executed under Section 110 of Cr.P.C., the executant cannot be sentenced to imprisonment under Section 122 (1) (b) of Cr.P.C., for breach. He would also rely on the Judgment of this Court reported in 2019 (2) MLJ(CrI)556, [P.Sathish V. State and Others] and would submit that order suffers from violation of principles of natural justice and violation of procedures contemplated under Chapter VIII of Cr.P.C. Further the Executive Magistrate had not conducted the enquiry in accordance with law and thereby, the order is liable to be set aside.
5. The learned Additional Public Prosecutor would submit that the petitioner had executed a bond under Section 110 of Cr.P.C., for maintaining peace for a period of ten months on 03.04.2019 and while the bond was in existence and force, the petitioner had violated it by involving in a case in Crime No.314/2019.
6. I have gone through the order, dated 15.05.2019, made in Na.Ka.No.727/2019/Aa, passed by the 1st respondent. The order does not disclose anything as if the petitioner was made to show cause or that he was afforded the opportunity of defending his case, in a proper manner.
7. The order suffers from illegality for non compliance of the procedures contemplated under Chapter VIII of Cr.P.C.

8. In view of the above, the criminal revision is allowed and the order dated 15.05.2019, made in Na.Ka.No.727/2019/Aa, passed by the 1st respondent, is set aside. In view of the order, the petitioner is directed to be released from the prison, if he is not connected in or wanted in any other case. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Sub District Magistrate Cum Revenue Divisional Officer, Madhurantagam Taluk, Kancheepuram District.
2. The Inspector of Police, Madhurantagam Police Station, Kancheepuram District.
3. The Public Prosecutor, High Court, Chennai.
4. The Superintendent of Central Prison, Puzhal.

+1cc to Mr. Ilayaraja Kandhasamy, Advocate sr.84865

Crl.R.C.No.638 of 2019

nr 04/10/2019

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