

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANIDRA

CrI.RC.No.918 of 2019 and
CMP.No.13190 of 2019

Raji @ varadharaji @ (Kalipillai Raji) ... Petitioner

-Vs-

State rep by
The Inspector of Police,
Vikkiravandi Police Station
Villupuram District.

...Respondent

Prayer: This Criminal Revision Petition has been filed under Section 397 and 401 of Cr.PC, to call for the entire records in connection with M.C.No.468/2019, on the file of the Sub Divisional Executive Magistrate Court, Villupuram and set aside the warrant order dated 28.08.2019, in M.C.No.468/2019.

For Petitioner : Mr.N.Sudharsan, for Mr.V.Murugesan

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

1.This Criminal Revision Petition has been filed, to call for the entire records in connection with M.C.No.468/2019, on the file of the Sub Divisional Executive Magistrate Court, Villupuram and set aside the warrant order dated 28.08.2019, in M.C.No.468/2019.

2.The case of the Prosecution is that the respondent had made a request to the Sub Divisional Execution Court, Villupuram, to initiate the proceedings against the petitioner, under Section 110 of Cr.P.C., pursuant to which, the petitioner appeared on 03.04.2019, before the Sub Divisional Executive Court, Villupuram and executed a bond under Section 110 of Cr.P.C., to maintain peace for ten months from 03.04.2019, whereas, subsequently, he has involved in the case in Cr.No.314/2019, registered by the respondent for offence under Section 294(b), 169, 353, 506 (ii) and 307 of IPC. The petitioner was arrested and remanded in Cr.No.314/2019 and while he was in Judicial

Custody, the respondent had requested the Sub Divisional Executive Magistrate, Villupuram, to cancel the bond under Section 122 (1) (b) of Cr.P.C. Since, the petitioner was in confinement, he was produced before the Sub Divisional Executive Magistrate, Villupuram, on 28.08.2019 and the said bond was cancelled and the petitioner was convicted and committed to prison to undergo imprisonment for a period of ten months. The Revision has been filed against the order, dated 28.08.2019.

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, on a false case, the petitioner was arrested and while he was in Judicial custody, the petitioner was produced before the Executive Magistrate, on 28.08.2019 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 of 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 28.08.2019, in M.C.No.468/2019, passed by the Executive Magistrate, Villupuram. The order does not disclose anything as if the

petitioner was made to show cause or that he was afforded at 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 28.08.2019, in M.C.No.468/2019, passed by the Sub Divisional Executive Magistrate Court, Villupuram , 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.

ssi

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Sub Divisional Executive Magistrate Court,
Villupuram.

2. The Inspector of Police,
Vikkiravandi Police Station
Villupuram District.

3. The Public Prosecutor,
High Court, Chennai.

4. The Superintendent of
Central Prison, Cuddalore.

+1cc to Mr.V.Murugesan, Advocate, SR.No.84343

Cr1.R.C.No.918 of 2019

Kak(09/10/2019)

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