

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.1219 of 2019 and
Crl.M.P.No.16338 of 2019

Dheena @ Dhinagaraj

... Petitioner/Accused

Vs.

1. The Sub-Divisional Executive Magistrate
and Revenue Divisional Officer,
Villupuram District.

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

... Respondents

PRAYER: This Criminal Revision Petition has been filed, under Section 397 read with 401 of Cr.P.C., seeking to set aside the order dated 30.05.2019, made in R.O.C.A1/M.C.No.108/2019, by the Sub-Divisional Executive Magistrate and Revenue Divisional Officer, Villupuram District.

For Petitioner : Ms.Raji
for Mr.S.Saravana kumar

For Respondent : Mr.M.Mohamed Riyaz, App

ORDER

This Criminal Revision Petition has been filed, challenging the order dated 30.05.2019, made in R.O.C.A1/M.C.No.108/2019, by the Sub-Divisional Executive Magistrate and Revenue Divisional Officer, Villupuram District.

2 Brief facts of the case are that in the earlier occasion on the request of the second respondent police, the petitioner had been produced before the first respondent and that he had executed a bond under Section 110 of CR.P.C before the Sub Divisional Executive Magistrate and Revenue Divisional Officer, Villupuram, on 04.03.2019, undertaking not to indulging the criminal activity for ten months. While the bond was in

force, the petitioner was involved in a case in Crime No.258 of 2019, registered by the Second respondent for the offences under Section 294(b), 324, 307 and 506(ii) of IPC. Finding that the petitioner had violated the bond. The second respondent, while the petitioner was in remand had made a request to the first respondent to proceed under Section 122(1)(b) of Cr.P.C. Thereafter, based on the request, the first respondent had ordered the Superintendent of Central jail, Cuddalore to handed over the petitioner to Inspector of Police, Valanur Police Station, Villupuram, to produce the petitioner on 30.05.2019 for enquiry. The enquiry was conducted on 30.05.2019 and the impugned order was passed on the same day, authorizing the the Superintendent of Central Jail, Cuddalore, to receive the petitioner into custody and to safely keep him in Jail for a period of ten months and on the same day, the impugned order was passed. Therefore, the revision petition has been filed against the impugned order.

3 Heard both sides and perused the materials placed on record.

4 The learned counsel for the petitioner Ms.Raji, would submit that on a request made by the second respondent to the Jail authorities, the petitioner was produced on PT warrant from prison on 30.09.2019 and on the same day without affording any opportunity and without following the guidelines of this Court, impugned order has been passed under Cr.P.C. He would submit that the initial order under Section 107 of Cr.P.C itself was passed in violation of the procedures and thereafter, no enquiry had been conducted in accordance with the procedures under Chapter VIII of Cr.P.C. He would submit that the entire proceedings initiated by the respondent or in violation of the established principles of law and the impugned order does not disclose subjective satisfaction of the first respondent and the respondents have not followed the guidelines of this Court in various judgments and would thereby seek to set aside the impugned order. In support of his contentions, the counsel for the petitioner would rely on the judgments of this Court reported in 2017 (1) LW (CrL.) 218 - [Balamurugan Vs. State represented by the Inspector of Police, (Law and Order), Palayamkottai Police Station, Tirunelveli City and 2019 (2) MLJ (CrL) 556 - [P.Sathish Vs. State and Others].

5 The learned Additional Public Prosecutor would submit that the petitioner had executed a bond on 04.03.2019, undertaking not to indulge in criminal activities of about ten months vide by ROC.No.108/2019. While, the bond executed by the

petitioner was in force that he had indulged in the criminal activity and now, based on the complaint given by one Bakkiyavathi in Crime No.258/2019, the case has been registered by the 2nd respondent for the offences under Sections 294(b), 324, 307 and 506(ii) of IPC, against the petitioner/accused, finding that the petitioner had violated the condition of bond the impugned order has been passed after hearing him.

6 In the Judgment reported in 2019 (2) MLJ(Cr1) 556 - [P.Sathish Vs. State and Others], this court had evolved legal principles/guidelines before passing orders under Section 122(1) (b) of Cr.P.C. and directed all the Executive Magistrates to follow it. It is apposite to refer to the relevant paragraphs under:

13. Moreover, the guidelines are integral part of Articles 21 & 22 of the Constitution of India and also inconsonance with Section 39-A of the Direct Principles of State Policy. No doubt, the State may have practical difficulties and may confront glitches in completing the enquiry in furtherance of exercise of power under Section 122(1)(b) of Cr.P.C., nevertheless, the Constitutional mandate, as provided under Articles 21 & 22 of the Constitution is paramount and supreme and the same has to be followed under all circumstances, notwithstanding the difficulties to be faced by the administration. When the liberty of an individual is sought to be affected and curtailed, the State is bound to provide legal assistance and also provide meaningful and fair opportunity to the persons concerned. In the absence of such opportunity, as aforementioned, the orders to be passed by the Executive Magistrates is prone to interference as being unconstitutional and contrary to the legal principles laid down by this Court. When a State is governed by a written Constitution and when the Constitution reigns supreme in our polity, it is the bounden duty of the State to protect the personal liberty of the citizen by following the constitutional mandate and the personal liberty cannot be made a casualty on the basis of administrative expediency. That alone can uphold the rule of law. When the personal liberty of a person is sought to be taken away by condemning him into prison for an unexpired period of bond, it is statutorily and constitutionally imperative that the person concerned must be given the benefit of meaningful, real and fair opportunity, as that alone would be the safeguard for the citizens against misuse of the provisions of Cr.P.C., by the Executive Magistrates concerned.

14. In the conspectus of the above, this Court is of the considered view that the suggestions/guidelines as given by the learned Senior Advocate and others on one side and the learned Public Prosecutor on the other side have been considered by this Court and the following legal principles emerge on such consideration:

1. Notice to be sent to the person by the Executive Magistrate to show cause as to why action under Section 122(1)(b) of Cr.P.C should not be taken for breach of the bond executed under Section 117 Cr.P.C on a date fixed.

2. At the enquiry, the Executive Magistrate should furnish the person the materials sought to be relied upon, including statements of witnesses, if any, in the vernacular (if the person is not knowing the language other than his mother tongue).

3. If the person wishes to engage an Advocate to represent him at the enquiry, an opportunity to have a counsel of his choice should be provided to him.

4. The Executive Magistrate shall inform the person about his right to have the assistance of a lawyer for defending him in the enquiry.

5. The enquiry shall be conducted by the Executive Magistrate on the notified date or such other date as may be fixed and the person should be allowed to participate in the same.

6. At the enquiry, an opportunity should be given to the person to:

(i) Cross-examine the official witnesses, if any and

(ii) produce documents and witnesses, if any, in support of his case.

7. Such Executive Magistrate or his successor in office, should then, apply his mind on the materials available on record, in the enquiry, and pass speaking order.

8. An order u/s. 122(1)(b) of Cr.P.C should contain the grounds upon which the Executive Magistrate is satisfied that the person has breached the bond.

9.A copy of the order should be furnished to the person along with the materials produced at the enquiry.

10.The enquiry, as far as possible shall be completed within 30 days and at no circumstance, the enquiry shall be adjourned unnecessarily. The advocates, who appear on behalf of the persons concerned, are expected to co-operate with the enquiry process for its expeditious completion."

The above legal principles as evolved to be followed by all the Executive Magistrates concerned in future. In order to infuse uniform approach by all the Executive Magistrates concerned, the learned State Public Prosecutor is directed to circulate this decision to the Government and the Government shall act upon the principles as laid down above and issue necessary instructions to all the designated Executive Magistrates to follow the principles strictly while exercising their power under Section 122 (1) (b) of Cr.P.C.

15.In the result, all the Criminal Revision Cases are allowed and the respective impugned orders are hereby set aside.

7 Further, in the judgment reported in 2017 (1) LW (Cr1.) 218 - [Balamurugan Vs. State represented by the Inspector of Police, (Law and Order), Palayamkottai Police Station, Tirunelveli City, wherein, this Court has held as under:

"Before passing the order, Executive Magistrate shall refer the materials produced, must give an opportunity to the petitioner and apply his judicial mind and arrive at this subjective satisfaction that the petitioner has breached the security bond executed by him to keep good behaviour. He must also record grounds of such proof."

8 This Court had directed the 2nd respondent to be present today with the records relating to this case and the records were produced before this Court. This Court perused the records of the impugned order.

9 A perusal of the records shows that the petitioner had been produced from prison on 30.09.2019 and without affording the opportunity to the petitioner as per the guidelines of this Court, the impugned order has been passed on the same day. Further, the impugned order does not disclose application of judicial mind and subjective satisfaction for passing the

impugned order. Thus, in the opinion of this Court, the impugned order suffers from legality and thereby, it is vitiated.

10 In view of the above, the Criminal Revision is allowed and the order passed by the Sub-Divisional Executive Magistrate and Revenue Divisional Officer, Villupuram District, dated 30.05.2019, made in R.O.C.A1/M.C.No.108/2019 is set aside. The Superintendent of Central Prison is directed to set the revision petitioner at liberty, if his further detention is no longer required in connection with any other case or proceedings. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To:

1. The Sub-Divisional Executive Magistrate
and Revenue Divisional Officer,
Villupuram District.
2. The Inspector of Police,
Valavanur Police Station,
Villupuram District.
3. The Additional Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison,
Cuddalore.

+1cc to Mr.S.Saravana Kumar, Advocate sr.94823

Cr1.RC.No.1219 of 2019

nr 22/11/2019