

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.11.2019
CORAM:
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.R.C.No.1224 of 2019

Sella @ Selvakumar

... Petitioner/Petitioner

Vs.

1.The State represented by,
Executive Magistrate,
Deputy Commissioner of Police,
Greater Chennai North Zone,
T.Nagar, Chennai - 17.

2.The Inspector of Police,
R4, Sounderpandiagadi Police Station,
Chennai - 17. ... Respondents/Respondent

PRAYER: The Criminal Revision Petition has been filed, under Section 397 read with 401 Cr.P.C to call for the impugned order dated 03.10.2019 issued by the Executive Magistrate, Deputy Commissioner of Police, Greater Chennai South Zone, T.Nager, Chennai - 600 017, made in C.M.P.No.1 of 2019 in R-4, Police, Soundaragpandiyana Angaadi Police Station, C.No.15/Kaa Aa R4 Police Station/2019.

For Petitioner : Mr.S.Palani
For Respondents: Mr.M.Mohamed Riyaz, App

J U D G M E N T

The revision petition has been filed seeking to set aside the order, dated 03.10.2019, passed in Na.Ka.No.76 Nir, S.So Nadu/KathuAa. Thimad/2019, on the file of the first respondent.

2 The brief facts of the case are as follows:

On 13.03.2019, 23.30 hours, while the Sub Inspector of Police of the second respondent police station was on her usual rounds to verify about the habitual offenders, she had seen the petitioner attempting to slip away from the place. When he was caught and enquired, the petitioner had not given a proper reply. Thereafter, it was found that he was involved in a case registered by the second respondent police during the year 2018 and sensing that if he is left in the same place, it will create law and order problem and in order to prevent further untoward incident, the petitioner was taken to the second respondent police station and a case in B.No.15 of 2019 under Section 107 Cr.P.C was registered and the petitioner was directed to appear

and thereafter, on verification, it was found that the petitioner was involved in three cases registered by the respondent police. On a request made by the second respondent, proceedings were initiated by the first respondent in Na.Ka.No.76 Nir, S.So Nadu/KathuAa.Thimad/2019, and the petitioner was directed to appear before the first respondent and the petitioner was made to execute a bond under Section 107 of Cr.P.C., to keep good behavior for a period of one year from 31.03.2019. Thereafter, on 23.09.2019, on a complainant given by one Raji, a case in Crime No.294 of 2019 was registered against the petitioner for the offences under Section 294(b), 323, 324 and 506(i) IPC. The petitioner had filed bail application, finding that the petitioner will come out on the bail, and there is a probability that he will indulge in activities prejudicial to maintenance of public peace, the 2nd respondent by filing an affidavit before the 1st respondent had requested to take action against the petitioner for having violated the bond under Section 122 (1) (b) of Cr.P.C., based on the request, the petitioner was produced on PT warrant from prison before the 1st respondent on 27.09.2019. On appearance copies were served on the petitioner and he was directed to appear on 03.01.2019. On 03.01.2019, the enquiry was conducted and the impugned order was passed. Challenging the order, the present revision has been filed.

3 The learned counsel appearing for the petitioner would submit that the respondents have not followed the procedure as contemplated under Chapter VIII of Cr.P.C. and that the petitioner was initially directed to execute a bond on 31.03.2019 and thereafter, no enquiry had been conducted by the respondent as contemplated under Section 116 of Cr.P.C. He would submit that the entire proceedings is vitiated since the respondents have not followed the guidelines issued by this Court in various judgments and further, the order passed by the first respondent does not disclose subjective satisfaction with regard to the allegations made by the second respondent and hence, the impugned order is liable to be set aside.

4 In support of his contentions the learned counsel would rely on the judgment reported in 2019 (2) MLJ(Cr1) 556 - [P.Sathish Vs. State and Others] and 2017 (1) LW (Cr1.) 218 - [Balamurugan Vs. State represented by the Inspector of Police, (Law and Order), Palayamkottai Police Station, Tirunelveli City.

5 The learned Additional Public Prosecutor would submit that on the request made by the second respondent, the petitioner was earlier produced before the first respondent on 13.03.2019 and the petitioner had after enquiry, executed a bond

on 31.03.2019, wherein, he had undertaken to keep good behavior for a period of one year from 31.03.2019 and while the bond was in force, the petitioner involved himself in a case in Crime No. 294 of 2019 registered by the second respondent on 23.09.2019. Thereafter, on the request made by the second respondent, the petitioner was produced before the first respondent on PT warrant dated 27.09.2019 and thereafter, after furnishing the copies and giving sufficient opportunity to engage the counsel, enquiry was again conducted on 03.10.2019 and based on evidence on record, the impugned order has been passed.

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 matter came up before this Court on 12.11.2019 and this Court had directed the second respondent to be present along with the file. The second respondent is present with the file today. This Court carefully perused the records and the impugned order. Though, in the order, it has been stated that the petitioner had executed a bond under Section 107 of Cr.P.C., no further proceedings had been taken as contemplated under

Chapter VIII of Cr.P.C. Further, the order discloses that no sufficient opportunity has been given to the petitioner as per the guidelines of this Court in various judgments. Further, the observation on paras 9 and 10 do not discloses subjective satisfaction of the 1st respondent. In the opinion of this Court, the impugned order has been passed in violation of the procedures as contemplated under Chapter VIII of Cr.P.C., is liable to be set aside.

9 In the result, the Criminal Revision Case is allowed and impugned order by the Executive Magistrate, Deputy Commissioner of Police, Greater Chennai South Zone, T.Nager, Chennai - 600 017, dated 03.10.2019, made in C.M.P.No.1 of 2019 in R-4, Police, Soundaragpandiyanar Angaadi Police Station, C.No.15/Kaa Aa R4 Police Station/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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

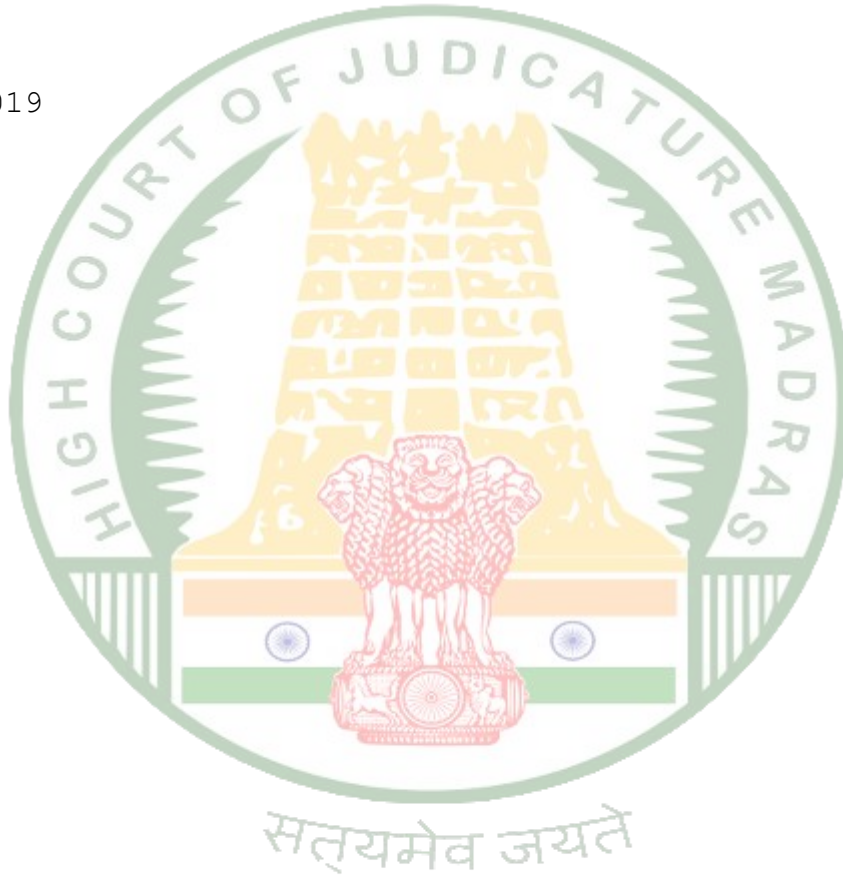
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To

- 1.The Executive Magistrate, Deputy Commissioner of Police, Greater Chennai North Zone, T.Nagar, Chennai - 17.
- 2.The Inspector of Police, R4, Sounderpandianganadi Police Station, Chennai - 17.
- 3.The Public Prosecutor, High Court, Madras.
- 4.The Principal & Session Judge Chennai-104
- 5.The Chief Metropolitan Magistrate egmore, Chennai-8
- 6.The Superintendent Central Prison Puzhal chennai-66

+1 cc to Mr.S.Palani Advocate sr96732

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