



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	26.03.2019
Date of Order	29.04.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLICrl.R.C(MD)No.128 of 2019andCrl.MP(MD)No.2195 of 2019

Ashik Mohammed @ Mohammed Ashik
@ Al Ashik

: Revision Petitioner

Vs.

1.The Executive Magistrate/The Revenue Divisional Officer,
Office of the Revenue Divisional Office,
Dindigul, Dindigul District.

2.The Inspector of Police,
Town West Police Station,
Dindigul District. Dindigul.

3.The Inspector of Police,
Vedasandur Police Station,
Dindigul District, Dindigul.

4.The Inspector of Police,
South Police Station,
Dindigul District, Dindigul.

5.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

: Respondents

Prayer: Criminal Revision Petition has been filed under
Section 397 r/w 401 of Criminal Procedure Code, against the order in
M.C.No.88/2018/A1, dated 26.02.2019 passed by the 1st respondent.

For Revision Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Robinson
Government Advocate
(Criminal side)

O R D E R

THIS criminal revision is directed against the order in
M.C.No.88/2018/A1, dated 26.02.2019 passed by the 1st respondent.



2. According to the petitioner, on 12.11.2018, after finishing prayer in mosque, while he returning to his home, the 2nd respondent police party called the petitioner to the police station and detained illegal custody and harassed him to sign the documents forcefully and obtained his signature and thereafter, the 2nd respondent foisted a case in Crime No.545 of 2018 under Section 110 of Cr.P.C and on compulsion executed a bail bond worth Rs.1,00,000/- with two sureties for a period of one year and subsequently, on 12.11.2018, the 2nd respondent foisted another case in crime No.545 of 2015 under Section 122(1)(b) of Cr.P.C and produced before the 1st respondent. Subsequently, the 1st respondent passed the impugned order, dated 26.02.2019. Aggrieved over the same, the petitioner is before this court by way of criminal revision.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The main contention raised on the side of the petitioner is that the 1st respondent did not provide reasonable opportunity to defend the case of the detenu before passing the impugned order. It is the further contention of the petitioner that when without giving reasonable opportunity to defend the case of the detenu, any order passed by the Executive Magistrate can be set aside. For that, the learned counsel for the petitioner submitted the following judgments:-

01. AIR (33) 1946 Allahabad 333 (Narain Sahai and others Vs. Emperor);

(02). Order of this Court passed in Crl.OP(MD) No.6841 of 2015, dated 10.04.2015 (Malathi Vs. State);

(03). 2016 CRI.L.J. 4603 (Bala Vs. Administrative Executive Magistrate, Trichy City);

(04). Order of this court passed in Crl.O.P(MD) No.7591 of 2017, dated 21.04.2017 (Rajkumar Vs. State);

(05). 2017(1) TLNJ 516 (Criminal) (Sivashanmuga Sundaram Vs. The Executive Magistrate/Deputy Commissioner of Police L & O, Tirunelveli and two others);

(06). Order of this Court made in Crl.R.C.No.505 of 2017, dated 05.07.2017 (Selvam @ Selvaraj Vs. The Executive Magistrate-cum-Deputy Commissioner of Police, (Law & Order, Crime and Traffic), Tiruppur City and another);

<https://hcservices.ecourts.gov.in/hcservices> (07). Order of this court passed in Crl.MP(MD) No.7580 of 2018 in Crl.RC(MD) No.542 of 2018, dated 25.09.2018 (Thangam (Mathalai Muthu Vs. The Executive



First Class Magistrate-cum-Revenue Divisional Officer, Dindigul); and

(08).Order of this court passed in CrI.MP(MD) No.8387 of 2018 in CrI.RC(MD)No.585 of 2018, dated 28.02.2019 (Amalraj Vs. The Executive First Class Magistrate-cum-Revenue Divisional Officer, Dindigul).

5.The learned Government Advocate (Criminal side) appearing for the respondents argued that the first respondent has rightly passed the impugned order and that the petitioner would be subjected to Section 120(1)(b) of Cr.P.C., and that no notice is required to be sent by the first respondent as Section 122 Cr.P.C., does not contemplate the issuance of such notice and prays for dismissal of the criminal revision.

6.A careful perusal of the impugned order would show the non-application of mind of the Executive Magistrate. Merely because certain cases have been registered against the petitioner, the same cannot be said to be sufficient ground leading to prove the breach of bond to the satisfaction of the Magistrate concerned that too without hearing the affected party. The close reading of Section 122(1)(b) Cr.P.C would clearly show that the Executive Magistrate shall give an opportunity to the petitioner and apply his judicial mind and arrive at his satisfaction that the petitioner had breached the security bond executed by her to keep good behaviour and he must also record the grounds of such proof. As per Section 122(1)(b) CrI.P.C, the Executive Magistrate must record his grounds of satisfaction and he must say whether sufficient cause has been established. But he did not do so. It is complete non-application of mind. The 1st respondent passed the order mechanically.

7.At this juncture, it is pertinent to mention the decision reported in **2016(2) TLNJ 228 (Criminal) (Bala @ Balakrishnan and Administrative Executive Magistrate, Trichy City and others,** wherein, it has been held as follows:-

"As per Section 122(1)(b) of Cr.P.C., the Executive Magistrate before ordering a person to be jailed, he shall be satisfied that the person has breached the bond conditions, the Executive Magistrate must also record the grounds for such proof. That means, he must apply his mind and pass orders. He cannot pass order mechanically. But he need not write an elaborate Judgment like us. His orders must show atleast briefly the grounds upon which, he has satisfied that the person has breached the bond executed by him. Under Section 122(1)(b) of Cr.P.C., if the said satisfaction is not recorded, it will be that the detention authority sending a person to jail is arbitrary, mechanical, not fair, unjust. The detention order must disclose the grounds of



proof, otherwise, the Court cannot see what has transpired in the mind of the Executive Magistrate in passing the detention order, more particularly, when these orders are revisable by the Sessions Judges."

8. Keeping in view of the above facts, this court is of the considered view that the impugned detention order has not been passed in accordance with law and has been passed mechanically taking of/deprivation of a person's personal liberty will not stand the test of law and the impugned order suffers from legality, propriety and it is vitiated. From the legal position stated above, it is clear that the impugned order has been passed without following the principles of natural justice and the same is liable to be set aside.

9. In fine, this Criminal Revision Petition is **allowed** and the impugned proceedings issued by the first respondent in M.C.No.88/2018/A1, dated 26.02.2019 is set aside. The 5th respondent is directed to set at liberty the revision petitioner, if his further detention is no longer required in connection with any other case or proceedings. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (writs)

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Sub Assistant Registrar (CS)

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To,

1. The Executive Magistrate/The Revenue Divisional Officer,
Office of the Revenue Divisional Office,
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3. The Inspector of Police,
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Dindigul District, Dindigul.
4. The Inspector of Police,
South Police Station,
Dindigul District, Dindigul.



5.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Order made in
Cr1.R.C (MD) No.128 of 2019
29.04.2019

VB(12.12.2019) 5P 7C