



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2019

CORAM

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.347 of 2019

and

Crl.MP(MD)Nos.5150 and 5151 of 2019

S.Sutharsun

: Revision Petitioner/
Respondent

Vs.

1.The Executive Magistrate-cum-
Deputy Commissioner of Police,
Law and Order,
Madurai City.

2.The Inspector of Police,
Thideernagar (Crime) Police Station,
Madurai City.
(LIR No.7 of 2019)

2.The Superintendent,
Central Prison,
Madurai.

: Respondents

Prayer: Criminal Revision has been filed under Section 397 r/w 401 of the Criminal Procedure Code, against the order passed by the 1st respondent in M.C.No.126/Ne.Sae.Na.& Ka.Thu.Aa./M.Ma./2019, dated 26.04.2019.

For Revision Petitioner : Mr.M.Jegadeesh Pandian

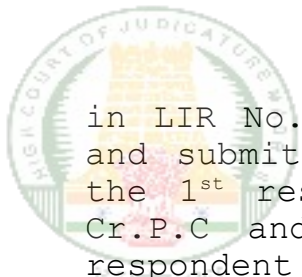
For Respondents : Mr.APG Ohm Chairma Prabhu
Government Advocate
(Criminal side)

O R D E R

This criminal revision is directed against the order passed by the 1st respondent in M.C.No.126/Ne.Sae.Na.& Ka.Thu.Aa./M.Ma./2019, dated 26.04.2019.

2.It is seen that the Inspector of Police, Thideernagar Police Station, Madurai/2nd respondent herein registered a case/(LIR)

<https://hcservices.ecourts.gov.in/hcservices/>

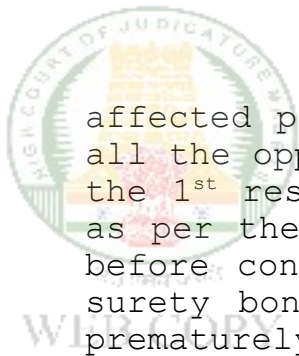


in LIR No.7 of 2019 under Section 109 of Cr.P.C, dated 22.02.2019 and submitted the report under the capacity of complainant before the 1st respondent and requested for action under Section 110 of Cr.P.C and based on the report of the 2nd respondent, the 1st respondent initiated proceedings under Section 110 of Cr.P.C as against the petitioner and issued summon to the petitioner on 25.02.2019 under Section 111 of Cr.P.C and directed him to appear in person on 27.02.2019 before the 1st respondent. The petitioner duly appeared on 27.02.2019 and on appearance of the petitioner executive order under section 111 of Cr.P.C was issued to the petitioner and again on 01.03.2019 through oral enquiry, the 1st respondent found that the averments stated by the 2nd respondent are true and hence, he directed the petitioner to execute bond with two sureties for a sum of Rs.1,00,000/- each under Section 117 of Cr.P.C in M.C.No.126 of 2019.

3.It is further seen that the Inspector of Police, S.S Colony Police Station, Madurai City registered another case against the petitioner on 27.03.2019 by obtaining a complaint from one Akbar Ali alleging that on 27.03.2019 at about 21.30 hours, while the de-facto complainant went to TASMAR Bar (Kushbu Wine Shop) at Kennet Road, at that time one Sutharsun/petitioner and several others came to the bar, assaulted the de-facto complainant by using knife, beer bottle and caused injury to his head, hands and legs and immediately, he was rescued by other persons and taken to the hospital and in this regard, a case in Crime No.285 of 2019 stands registered under Sections 147, 148, 294(b), 342, 307 IPC. The petitioner got arrested on 28.03.2019 and remanded to judicial custody. The 1st respondent issued PT warrant on 13.04.2019 and directed the 2nd respondent to produce the accused on 20.04.2019 through PT warrant and subsequently, the impugned order came to be passed on 26.04.2019. Aggrieved by the said order, the petitioner is before this court.

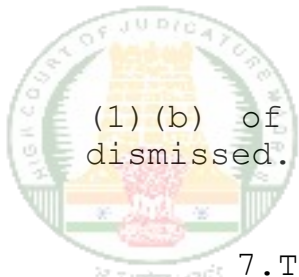
4.Heard both sides and perused the materials available on record.

5.The contention raised on the side of the revision petitioner/accused is that before initiating proceedings as well as before passing the impugned order, dated 26.04.2019, no opportunity was given to the petitioner to engage a lawyer to defend the proceedings before the 1st respondent and the same violates the Code of Criminal Procedure, further the right to engage a lawyer, which is guaranteed under the Constitution of India, nowhere in the impugned order of the 1st respondent stated about the opportunity of giving the petitioner to engage a lawyer of his choice, hence the impugned order is liable to be set aside and as per Article 21 of the Constitution of India, it is categorically clear that during any proceedings, enquiry or trial, the affected party must be provided with legal assistant, if the affected party not able to engage a lawyer of his choice, due to poverty, it is the role of the State to appoint a legal aid lawyer to defend the



affected party, in order to prove that the parties have dealt with all the opportunities guaranteed under law, but in the case on hand, the 1st respondent had not complied the above provisions of law and as per the impugned order, it came to light that the 1st respondent before conducting the proceedings on 20.04.2019, had cancelled the surety bond executed by him, it shows that the 1st respondent had prematurely decided the case as against the petitioner, even before examination of witnesses as well as cross examination of witnesses and before passing the present impugned order and under Sections 122 (1) (b) r/w 117 of Cr.P.C, the 1st respondent ought to have passed an order under Section 111 of Cr.P.C, which is a preliminary one, no such order was passed and no such order was served to the petitioner, without passing the preliminary order, the 1st respondent by-passing the procedures passed the final order under Section 122 (1)(b) r/w 117 of Cr.P.C and the same is liable to be set aside and without contemplated the procedures under Sections 111, 112 of Cr.P.C, the 1st respondent has passed an order under Section 117 of Cr.P.C and hence, the prime initiation of the proceedings itself is illegal and hence, the consequential impugned order is liable to be set aside and the 1st respondent did not record his satisfaction regarding the truthfulness of the information submitted by the 2nd respondent and hence, it shows that the 1st respondent conducted the proceedings in a mechanical manner without following the procedure, particularly under Section 116 of the Cr.P.C and hence, the impugned order of the 1st respondent is liable to be set aside and after passing the preliminary order under Section 110 of Cr.P.C, the first respondent without conducting enquiry or taking evidence as done in a summons case straight away passed the order under section 117 of Cr.P.C and prays that the criminal revision has to be allowed.

6.The learned Government Advocate (Criminal side) appearing for the respondents submitted that based on the report of the second respondent, the 1st respondent initiated the proceedings under Section 110 of Cr.P.C and after due enquiry, the 1st respondent directed the accused to execute a bond with two sureties under Section 117 of Cr.P.C, but the Inspector of Police, S.S Colony Police Station, Madurai City, registered a case as against the petitioner/accused by a complaint given by one Akbar Ali and this petitioner/accused arrested on 28.03.2019 and remanded to judicial custody and the same was brought to the knowledge of the 1st respondent and then, on PT warrant, the petitioner/accused was produced before the first respondent and then copies as well as the list of witnesses have been furnished to the petitioner/accused and afterwards, four witnesses had been examined and only after giving reasonable opportunity to the petitioner/accused, the order under Section 122(1)(b) of Cr.P.C passed and several criminal cases were registered as against the petitioner/accused and admittedly, the accused was allowed to defend his case and the petitioner/accused has violated the bond executed by him under section 117 of Cr.P.C and hence, the order passed by the first respondent passed the order under section 122



(1)(b) of Cr.P.C and prays that the criminal revision has to be dismissed.

7.The Inspector of Police, Thideernagar, Madurai city, registered a case and laid Inspection report in LIR No.7 of 2019 under Section 109 of Cr.P.C on 22.02.2019. Based on the report of the 2nd respondent, the 1st respondent initiated the proceedings under Section 110 of Cr.P.C as against the petitioner/accused and notice was issued for the appearance of the petitioner/accused and the first respondent after due enquiry, directed the petitioner/accused to execute a bond under Section 117 of Cr.P.C and the petitioner/accused executed a bond for a sum of Rs.1 Lakhs. Thereafter a criminal case in Crime No.285 of 2019 was registered as against the petitioner/accused under Sections 147, 148, 294(b), 342, 307 IPC and the petitioner/accused got arrested on 28.03.2019 and he was remanded to judicial custody and the same was intimated to the first respondent. Then the petitioner was produced on PT warrant before the first respondent and thereafter, copies as well as list of witnesses have been furnished to the petitioner and on 20.04.2019 four witnesses have been examined and further witnesses were examined by the petitioner/accused and on 26.04.2019, the first respondent came to the conclusion that the petitioner had breached the bond and acted as against the public peace and tranquillity and hence, the first respondent cancelled the surety bond and then the first respondent passed order under Section 122(1)(b) of Cr.P.C.

8.The main contention of the petitioner/accused is that before passing the impugned order, no reasonable opportunity was given to the petitioner. But on careful perusal of the impugned order, it reveals that after giving reasonable opportunity to the petitioner/accused, the first respondent passed the order.

9.Further on the side of the prosecution, it is stated that after passing the order under Section 110 of Cr.P.C, number of cases were registered as against the petitioner/accused and prays that the criminal revision has to be dismissed.

10.There is no denial on the part of the petitioner/accused regarding the registration of the criminal cases against the petitioner/accused. On careful perusal of records reveals that only after giving reasonable opportunity to the petitioner, the first respondent has passed the impugned order. Hence, it is not necessary to interfere with the findings of the first respondent.

11.For all the reasons stated above, this court is of the considered view that the impugned order passed by the first respondent does not require any interference of this court.



12. In the result, the criminal revision fails and the same is dismissed. Consequently, connected Miscellaneous Petitions are closed.

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Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To:

1. The Executive Magistrate-cum-
Deputy Commissioner of Police,
Law and Order,
Madurai City.
2. The Inspector of Police,
Thideernagar (Crime) Police Station,
Madurai City.
3. The Superintendent,
Central Prison,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Crl.R.C (MD) No.347 of 2019

16.07.2019

NR (06.10.2020) 5P 5C