



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated:19.12.2019
CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

WEB COPY

CrI.R.C(MD)No.753 of 2019
and
CrI.MP(MD)No.10219 of 2019

A.Suba Sundari : Revision Petitioner/wife of the Accused

Vs.

- 1.The Sub Divisional Executive Magistrate and
Revenue Divisional Officer,
Sivakasi, Virudhunagar District. ..1st Respondent/Respondent
- 2.The State rep by its
The Sub Inspector of Police,
Koomapatti Police Station,
Virudhungar District.
- 3.The Inspector of Police,
Watrap Police Station,
Virudhunagar District. ... Respondents/Complainants
- 4.The Superintendent of Prison,
Madurai Central Prison,
Madurai. : Respondents/Respondent

Prayer: Criminal Revision Petition has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the order in MC No.A2/174/2019, dated 17.05.2019 passed by the 1st respondent and set aside the same as illegal and allow the above CRP.

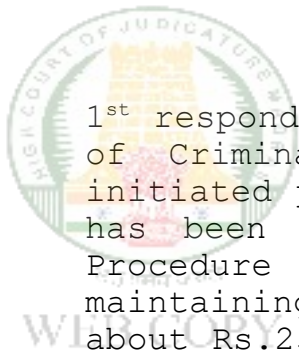
For Revision Petitioner : Mr.Sangilimadan

For Respondents : Mr.A.P.G.Ohm Chairma prabhu
Government Advocate
(CrI Side)

O R D E R

This criminal revision is directed against the order in MC No.A2/174/2019, dated 17.05.2019 passed by the 1st respondent.

2.The 2nd respondent registered a case against the petitioner's husband in Crime No.57 of 2019 for the alleged offence under section 107 of the Criminal Procedure Code and requested the



1st respondent to initiate proceedings against him under section 110 of Criminal Procedure Code and based on that, 1st respondent initiated proceedings in MC No.A2/174/2019 and on 26.03.2019 order has been passed against him under section 117 of the Criminal Procedure Code, as if it is necessary for keeping the peace or maintaining good behaviour and directed him to produce bond worth about Rs.25,000/- with surety for a period of one year and the same was executed on the same day on 26.03.2019 and in the meantime, the 3rd respondent police foisted a case against him in Crime No.80 of 2019 for the alleged offence under section 294(b), 323, 427 and 506 (ii) IPC by obtaining a complaint from the de-facto complainant and arrested by the 3rd respondent police and remanded into the judicial custody. Subsequently, the 1st respondent passed the impugned order, dated 17.05.2019. 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);

(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 Crl.MP(MD) No.8387 of 2018 in Crl.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 Additional Public Prosecutor appearing for the respondents argued that the first respondent has rightly passed the impugned order and that the husband of 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 first respondent. Merely because certain cases have been registered against the husband of 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 detenu and apply his judicial mind and arrive at his satisfaction that the detenu 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) Crl.P.C, the first respodnent/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 presumed 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 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.A2/174/2019, dated 17.05.2019 is set aside. The 4th respondent is directed to set at liberty the detenu viz., the husband of 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/-

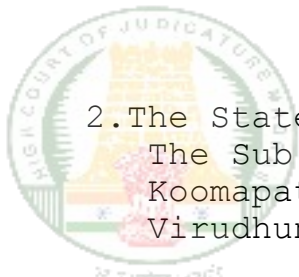
Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

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To,

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2.The State rep by its
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Virudhungar District.

3.The Inspector of Police,
Watrap Police Station,
Virudhunagar District.

4.The Superintendent of Prison,
Madurai Central Prison,
Madurai.

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

+1 CC to M/s.S.SANGILIMADAN, Advocate (SR-105925[F] dated
19/12/2019)

Order made in
Crl.R.C (MD) No.753 of 2019
19.12.2019

KK/SAR/20.12.2019/5P-7C/