

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**CRL.O.P.No.3667 of 2019

Bala @ Balakumar

... Petitioner

Vs.

1. The Executive Magistrate
cum-Deputy Commissioner of Police,
Law and Order,
T.Nagar District,
Chennai - 600 017.

2. The Inspector of Police,
Law and Order,
E-3 Teynampet Police Station,
Chennai - 600 018.
Crime No.58 of 2019

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to the proceedings issued by the first respondent herein in M.C.No.1/2018 in Na.Ka.No.203/Nir.Se.Nadu/Ka.Thu.Aa.Thi.Maa/2018 in E3 Teynampet Ka Ni Order 76/Ka.Aa.E3 Ka.Ni/2018 u/s 100 Cr.P.C. dated 25.01.2019 on the file of the first respondent and quash the same.

For Petitioner : Mr.B.Shruthan

For Respondents : Mr.Mohammed Riyaz
Additional Public Prosecutor.

ORDER

This Petition is filed to quash the proceedings dated 25.01.2019

issued by the first respondent in in M.C.No.1/2018 in Na.Ka.No.203/Nir.Se.Nadu/

Ka.Thu.Aa.Thi.Maa/2018 in E3 Teynampet Ka Ni Order 76/Ka.Aa.E3 Ka.Ni/2018 u/s 100 Cr.P.C., thereby imposed imprisonment for a period of 196 days under Section 122(1)(b) of Cr.P.C.

2. The learned counsel appearing for the petitioner would submit that the petitioner furnished security for good behavior under Section 110 of Cr.P.C before the first respondent under Section 100 of Cr.P.C. on 06.08.2018. He also furnished two sureties. Thereafter without justification, the second respondent police registered a case in Crime No.58 of 2019 for the offences under Section 294(b), 323, 506(i) IPC and Section 4 of Tamilnadu Prohibition of Woman Harassment Act, 2002. The said FIR is pending and no final report has been filed by the second respondent. Now by the impugned order, the first respondent cancelled the earlier order thereby accepting the sureties under Section 110 of Cr.P.C. executed by the petitioner and also imposed imprisonment for a period of 196 days under Section 122(1)(b) of Cr.P.C. Further submitted that the first respondent without even furnishing any documents and conducting the enquiry, imposed punishment on the petitioner and it is violation of natural justice. The petitioner was never permitted to engage an advocate and without even cross examining the witnesses and without even affording any opportunity, the impugned order was passed by the first respondent and it is violation of principal of natural justice. Further submitted that if the petitioner had not engaged an advocate, the first respondent should have to provide Legal Aid to conduct the

enquiry on the proceeding initiated by the first respondent, as such the first respondent failed to provide any legal assistance. It is nothing but unconstitutional and unfair procedure. Therefore, he sought for quashing the entire proceeding initiated under Section 122(1)(b) of Cr.P.C.

3. Per contra, the learned Additional Public Prosecutor would submit that the petitioner involved in two cases. Even after executing the sureties before the first respondent, he involved in a case in Crime No.58 of 2019 for the offences under Section 294(b), 323, 506(i) IPC and Section 4 of Tamilnadu Prohibition of Woman Harassment Act, 2002. Therefore he prayed that the order passed by the first respondent does not warrant any interference from this Court.

4. Heard Mr.B.Shruthan, learned counsel appearing for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondents.

5. The first respondent passed the impugned order thereby ordered the petitioner to be imprisoned for 196 days under Section 122(1)(b) of Cr.P.C. It is relevant to read the Section 122(1)(b) of Cr.P.C. as follows :-

"122. Imprisonment in default of security.:-

(1) (a) If any person ordered to give security under section 106 or section 117 does not give such security on or

before the date on which the period for Which such security is to be given commences, the shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period- he gives the security to the Court or Magistrate who made the order requiring it.

(b) If any person after having executed a bond without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor- in- office, to have committed breach of the bond, such Magistrate or successor- in-- office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, and after giving the concerned person a reasonable opportunity of being heard, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years."

The first respondent has powers to take preventive measures to prevent the persons from indulging any criminal activities in order to keep the peace and public tranquility. Under Section 122(3) of Cr.P.C. the Executive Magistrate may direct the persons to execute bond up to three years, when they breach the condition, without passing detention order under Section 122 (1)(b) of Cr.P.C.

6. The impugned order dated 25.01.2019, passed by the first respondent revealed that the petitioner, who was arrested and confined at Central, Puzhal, was produced before the first respondent on 21.01.2019. He was informed that he can appoint an Advocate to appear on behalf of him and issued show case notice and posted the matter for hearing on 25.01.2019. On 25.01.2019, the first respondent examined the Inspector of Police, Sub Inspector and other witnesses. But the first respondent failed to give opportunity to the petitioner to cross examine the witnesses and the statement of the above witnesses and the documents relating to the case registered in Crime No.58 of 2019 are not supplied to the petitioner. The impugned order passed only on the basis of the evidence recorded from the witnesses. When the first respondent concluded that the breach is proved, the petitioner has to be given the opportunity of hearing. Admittedly, the petitioner was not given the opportunity of hearing.

7. More over the satisfaction of the Magistrate has to be recorded in the impugned order and it should be based upon the materials produced by the police officers. As per the Section 122(3) of Cr.P.C., the first respondent before cancelling the bond executed by the petitioner, he shall be satisfied that the person has breached the bond conditions and he must also record the satisfaction for proof. Before passing the order, he must apply his mind and pass orders and it could not be passed mechanically. Further the detention order must disclose the grounds of proof and satisfaction of the Magistrate and it has to be recorded in the impugned order and the said satisfaction should be based on the materials which was produced by the police officer concerned as well as the contra materials if any, that could be produced by the person, whom against the proceeding has sought to be invoked.

8. The perusal of impugned order would show that the first respondent passed the said order without application of mind. It is also seen that no explanation is called, for the violation of the terms of the bound from the petitioner and no hearing opportunity was given to the petitioner before cancelling the bond executed by him. The impunged detention order reveals that three witnesses were examined in the presence of the petitioner, who are produced on 25.01.2019 and the petitioner did not cross examine those witnesses. The petitioner did not produce any evidence or document and no explanation was given by him. Without giving any opportunity to the petitioner,

the detention order was passed to undergo the detention for the balance period of 196 days on the same day i.e., on 25.01.2019 itself. It is the violation of Article 21 of Constitution of India. No one shall be deprived of his life or personal liberty except according to procedure established by law. As such, this Court finds that the impugned order is vitiated and it is liable to be set aside.

9. In fine, the impugned order passed by the first respondent in M.C.No.1/2018 in Na.Ka.No.203/Nir.Se.Nadu/Ka.Thu.Aa.Thi.Maa/2018 in E3 Teynampet Ka Ni Order 76/Ka.Aa.E3 Ka.Ni/2018 u/s 100 Cr.P.C. dated 25.01.2019, is set aside and the Criminal Original Petition is allowed. The petitioner shall be set at liberty forthwith, if his further detention is no longer required in connection with any other case or proceedings pending against him.

12.02.2019

Internet:Yes/No

Index :Yes/No

Speaking/Non speaking order

Note : Issue order copy
on 14.02.2019

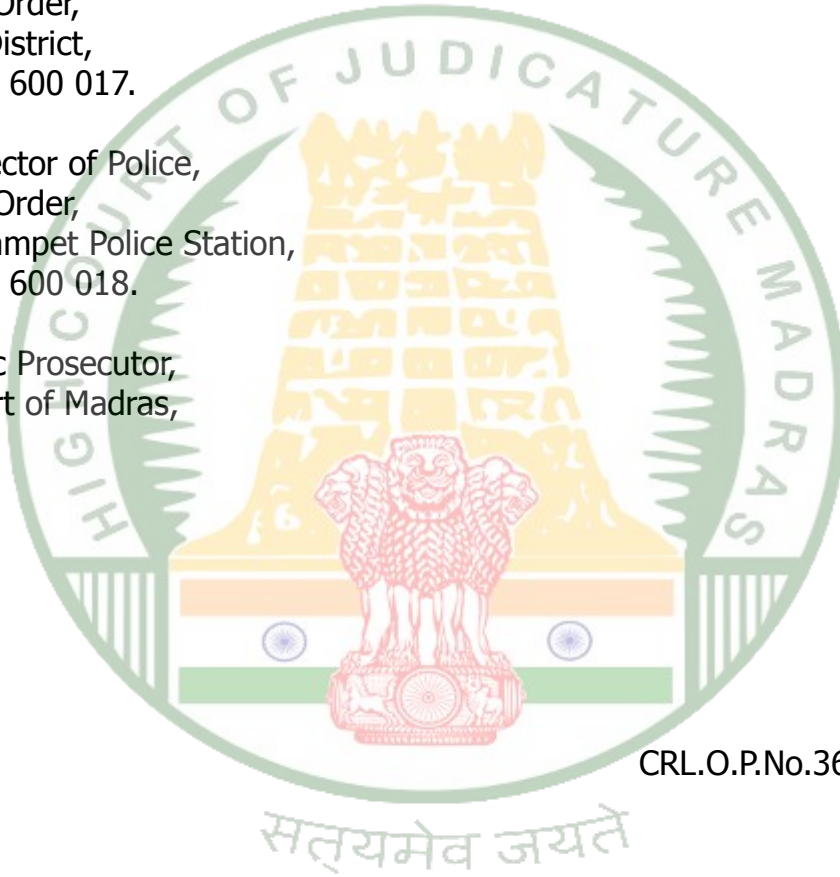
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G.K.ILANTHIRAIYAN, J.

rts

To

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cum-Deputy Commissioner of Police,
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Chennai - 600 017.
2. The Inspector of Police,
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E-3 Teynampet Police Station,
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High Court of Madras,
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