

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.09.2020

PRONOUNCED ON: 07.10.2020

CORAM :

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.413 of 2020 & Crl.M.P. No.4719 of 2020

Honestraj ... Petitioner

vs.

- 1 The Executive Magistrate/
Deputy Commissioner of Police
St. Thomas Mount District
Chennai
 - 2 The Inspector of Police (Crime)
S.14, Peerkankaranai Police Station
Chennai 600 063
- ... Respondents

Criminal Revision under Section 397 read with Section 401 Cr.P.C. seeking to set aside the order dated 28.02.2020 passed in Misc. Petn. No.2 of 2020 on the file of the first respondent/Executive Magistrate-cum-Deputy Commissioner of Police.

For petitioner: Mr. B. Gopalakrishnan

For respondents: Mrs. P. Kritika Kamal
Govt. Advocate (Crl. Side)

ORDER

This criminal revision has been preferred challenging the order dated 28.02.2020 passed by the Executive Magistrate/Deputy Commissioner of Police, the first respondent herein, sentencing the petitioner under Section 112(1)(b) Cr.P.C. to undergo imprisonment for a period of 348 days, after deducting the period of 15 days imprisonment already undergone by him.

2 Heard Mr.B. Gopalakrishnan, learned counsel for the petitioner and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondents.

3 It is the case of the first respondent that the petitioner executed a bond for good behaviour under Section 109 Cr.P.C. on 12.02.2020 and that, within a very short span of two days from the said date, i.e., on 14.02.2020, he committed a cognizable offence, i.e., under the guise of seeking lift from a two wheeler rider, he brandished a knife at the said person and fled with the two wheeler and as such, he was liable to be sentenced under Section 122(1)(b) Cr.P.C. for breach of bond.

4 From a perusal of the bond dated 12.02.2020 executed by the petitioner, it is luculent that it was executed for good behaviour from a suspected person under Section 109 Cr.P.C., for the breach of which, he cannot be convicted and sentenced under Section 122(1)(b) Cr.P.C., since a conviction invoking the said provision is possible only in a case where there is breach of bond executed under Section 107 Cr.P.C. for keeping peace. In other words, conviction and sentence under Section 122(1)(b) Cr.P.C. can be pressed into service only in the event of breach of bond executed under Section 107 Cr.P.C. for keeping peace. In the instant case, as stated above, the bond executed by the petitioner under Section 109 Cr.P.C. is towards good behaviour and it is not a bond executed under Section 107 Cr.P.C. for keeping peace. In such view of the matter, the impugned order has to fall to ground. (emphasis supplied)

In view of the above and also by following the earlier order passed by this Court in Muthu @ Muthuraja vs. State¹, the impugned order dated 28.02.2020 passed by the first respondent in Misc. Petn. No.2 of 2020 is set aside and as a sequel, this criminal revision stands allowed. The petitioner is directed to be released from custody, if not required in connection with any other case. Connected CrI.M.P. is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

1 CrI.O.P. No.20997 of 2016 decided on 02.11.2016

To

- 1 The Superintendent,
Central Prison,
Puzhal,
Chennai.
 - 2 The Executive Magistrate/
Deputy Commissioner of Police,
St. Thomas Mount District,
Chennai.
 - 3 The Inspector of Police (Crime),
S.14, Peerkankaranai Police Station,
Chennai 600 063.
 - 4 The Public Prosecutor,
High Court, Madras.
 - 5 The Judicial Magistrate,
Alandur, Chennai.
- +1cc to Mr.B.Gopalakrishnan, Advocate Sr.32940

Crl.R.C. No.413 of 2020

ajs[col]
srg 14/10/2020

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