

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.6467 of 2020

Nedumaran

... Petitioner

Vs.

1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Tiruvarur District, Tiruvarur.

2.The Inspector of Police,
Valangaiman Police Station,
Tiruvarur District.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records pertaining to the proceedings in Ku.Va.N.208/2019/A5 dated 25.02.2020 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents: Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

O R D E R

This petition is filed to quash the proceedings in Ku.Va.N.208/2019/A5 dated 25.02.2020 on the file of the 1st respondent and quash the same.

2.The learned counsel appearing for the petitioner would submit that the petitioner furnished security for good behaviour for the period of one year under Section 111, 117 of Cr.P.C before the 1st respondent through the proceedings in Ku.VA.No.208/2019/A5 dated 16.08.2019. Thereafter on 08.02.2020 the 2nd respondent registered a false case against the petitioner in Cr.No.50/2020 for the offence under Section 294(b), 506(ii) of IPC, 3(1) of TN PPDL Act and he was remanded to Judicial custody on 09.02.2020. Further submitted that on 25.02.2020, based on the impugned order, 1st respondent

cancelled the earlier order thereby accepting the bond executed by the petitioner and also imposed punishment for imprisonment for a period upto 15.08.2020 under Section 122(1) (b) of Cr.P.C. Further submitted that the 1st respondent without even furnishing any documents and conducting the enquiry, imposed punishment for imprisonment on the petitioner and it is a clear violation of natural justice. The petitioner was never permitted to engage an advocate and without even cross examining the witnesses and without even affording the opportunity, the impugned order was passed by the 1st respondent and it is violation of principles of natural justice.

3.Per contra, the learned Additional Public Prosecutor would submit that the petitioner involved in a case in Cr.No.50 of 2020 for the offences under Section 294(b), 506 (ii) of IPC and 3(1) of TN PPDL Act. Therefore he prayed that the order passed by the first respondent does not warrant any interference from this Court.

4.Heard Mr.K.A.S.Prabhu, 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 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, he 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 25.02.2020, 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 25.02.2019. On 25.02.2019, 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.50 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 bond from the petitioner and no hearing opportunity was given to the petitioner before cancelling the bond executed by him. The impugned detention order reveals that witnesses were examined in the presence of the petitioner 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 upto 15.08.2020. 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 Ku.Va.N.208/2019/A5 dated 25.02.2020, 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.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

jas

To

1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Tiruvarur District, Tiruvarur.

2.The Inspector of Police,
Valangaiman Police Station,
Tiruvarur District.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.S.Prabhu, Advocate SR.No.24232

Cr1.O.P.No.6467 of 2020

VG II(CO)
GMY(19/06/2020)



WEB COPY