IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.12213 of 2020
and Crl.M.P.No.4858 of 2020

M.Vinoth,
S/o. Magendran,
No.3/43, Bharath Nagar,
Pallavaram,
Kanchipuram. ... Petitioner

Vs.

1. The Executive Magistrate cum
Deputy Commissioner,
O/o. Deputy Commissioner,
Pallavaram, Kanchipuram.

2. The Inspector of Police,
S-5, Pallavaram Police Station,
Pallavaram. ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the proceedings in M.P.No.3 of 2020 order passed by the first respondent police.

For Petitioners: Mr.P.Muthamizh Selvakumar

For Respondents: Mr.S.Karthikeyan
Additional Public Prosecutor.

ORDER

This petition is directed as against the proceedings in M.P.No.3 of 2020 on the file of the first respondent, thereby cancelled the bond executed by the petitioner under Section 107 of Cr.P.C., and sentenced him to under go simple imprisonment of 306 days, after deducting 59 days from the date of execution of bond under Section 107 of Cr.P.C.

2. The learned counsel appearing for the petitioner would submit that only because of the previous antecedent of the petitioner, the second respondent directed the petitioner to execute bond under Section 107 of Cr.P.C., and intimated him to appear before the first respondent as per the summons respectively. On receipt of summons, the petitioner appeared before the first respondent on 27.12.2019 and executed security bound in order to keep peace for one year and had

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given two sureties in the bond and also ensure that he will not likely to commit any offence in forthcoming one year respectively and if breach so, simple imprisonment for one year with Rs.10,000/- cost. After execution of the said bond, the petitioner never involved in any offence.

2.1. While being so, on the false complaint lodged by one Theksha with allegations that the petitioner followed her and proposed his love affair and also compelled her to love him. When she refused to love him, the petitioner himself caused injury to cut his hand and also threatened her with dire consequences. On receipt of the said complaint the second respondent registered a case in Crime No.53 of 2020 as against the petitioner for the offences under Section 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 1998. In pursuant to the said crime, the petitioner was arrested and remanded to judicial custody. Thereafter, the second respondent filed an affidavit requesting the first respondent to cancel the sureties bond executed by the petitioner and also prayed to convict the petitioner under Section 122(1)(a) of Cr.P.C, and the same has been taken on file by the first respondent in M.P.No.3 of 2020 and passed the impugned order on 28.02.2020, thereby cancelled the bond executed by the petitioner and convicted him to undergo simple imprisonment of 306 days. In fact, the said order never communicated to the petitioner or his parents or his relatives.

2.2. He further submitted that in fact, the petitioner was subsequently released on bail under Section 167(2) of Cr.P.C., by the learned Judicial Magistrate, Tambaram, in Crl.M.P.No.287 of 2020 in Crime No.53 of 2020 by an order dated 04.07.2020. Even then, the petitioner could not come out from the prison. Only thereafter, the petitioner came to understand that the impugned order has been passed as against him. Therefore, the impugned order is illegal and violation of procedure laid down under law. Therefore he sought for quashment of the said impugned order.

3. Per contra, the learned Additional Public Prosecutor would submit that the petitioner is an habitual offender and has very bad antecedent. Therefore, the petitioner was directed to execute bond under Section 107 of Cr.P.C., in order to keep peace for one year. While pending the same, again the petitioner involved in Crime No.53 of 2020 for the offences under Section 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 1998 in which, he was arrested and remanded to judicial custody on 23.02.2020. Therefore, the second respondent requested the first respondent to cancel the bond executed by the petitioner and also prayed to convict the petitioner for remaining number of days by an affidavit dated 26.02.2020. On receipt of the same, the first respondent passed impugned order and convicted the petitioner and sentenced him to undergo simple imprisonment

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for the remaining period of 306 days. The impugned order duly served to the petitioner by the second respondent. Therefore, he prayed for dismissal of this petition.

4. Heard Mr.P.Muthamizh Selvakumar, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondents.

5. It is seen that the petitioner executed bond under Section 107 of Cr.P.C., before the first respondent in order to keep peace for the period of one year. While pending the said bond, again the petitioner involved in Crime No.53 of 2020 registered for the offences under Section 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 1998, on the complaint lodged by one Theskha. In pursuant to the said crime, the petitioner was arrested and remanded to judicial custody. On perusal of records, the petitioner was not served with the impugned proceedings. Further the second respondent requested the first respondent to cancel the bond by an affidavit dated 26.02.2020. Thereafter, the first respondent without even giving any opportunity to the petitioner herein passed the impugned order on 28.02.2020. Therefore the entire proceedings of the first respondent is vitiated. That apart, the petitioner is incarcerated imprisonment from the date of his arrest i.e., on 23.02.2020.

6. Considering the above facts and circumstances, this Criminal Original Petition stands allowed and the impugned order dated 28.02.2020 passed in M.P.No.3 of 2020 on the file of the first respondent is hereby quashed. The petitioner viz., M.Vinoth, M/aged about 27 years, S/o. Magendran, who is confined at Central Prison, Puzhal is directed to be set at liberty forthwith unless his presence is required in connection with any other case. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True copy//

Sub Assistant Registrar

rts

To

1. The Executive Magistrate cum
Deputy Commissioner,
O/o. Deputy Commissioner,
Pallavaram, Kanchipuram.

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2. The Inspector of Police,
S-5, Pallavaram Police Station,
Pallavaram.

3. The Public Prosecutor,
Madras High Court,
Chennai.

4. The Superintendent,
Central Prison,
Puzhal.

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