

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos.12881 to 12883 of 2020
and Crl.M.P.Nos.5021, 5022 and 5023 of 2020

Surya,
S/o. Sellamuthu,
Ward No.12,
Dr.Radhakrishnan Street,
Sangu Pettai,
Perambalur,
Perambalur District.

... Petitioner in Crl.O.P.
No.12881 of 2020

Manikandan,
S/o.Natarajan,
Ward No.12,
Sangu Pettai,
Perambalur,
Perambalur District.

... Petitioner in Crl.O.P.
No.12882 of 2020

Thamilselvan,
S/o. Rajendran,
Ward No.12,
Dr.Radhakrishnan Street,
Sangu Pettai,
Perambalur,
Perambalur District.

... Petitioner in Crl.O.P.
No.12883 of 2020

Vs.

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

2. The Inspector of Police,
Perambalur Police Station,
Perambalur.

3. The Superintendent,
Central Prison,
Thiruchirappalli,
Trichy District.

...Respondents in all WPs

COMMON PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the proceedings in M.C.Nos.14, 15 and 13 of 2020 respectively, dated 18.07.2020 passed by the first respondent and quash the same.

For Petitioner
in all Crl.O.Ps. : Mr.S.Conscious Ilango

For Respondents
in all Crl.O.Ps. : Mr.S.Karthikeyan
Additional Public Prosecutor.

COMMON ORDER

These petitions have been filed to quash the impugned orders dated 18.07.2020 in M.C.Nos.14, 15 and 13 of 2020 respectively, passed by the first respondent under Section 122 (1)(b) of Cr.P.C., thereby cancelled bond executed by the petitioner in all petitions and detained them till the completion of bond period.

2. The petitioner in all the petitions had executed bound under Section 110 of Cr.P.C., to the tune of Rs.1,00,000/- with two sureties each for Rs.50,000/- to be of good behaviour for one year as directed by the first respondent herein on 02.07.2020. While being so on 10.07.2020, the petitioners were arrested and remanded to judicial custody in pursuant to the Crime No.1826 of 2020 registered for the offences under Sections 294(b), 341, 387 and 506(2) of IPC r/w Section 4 of Tamil nadu Prohibition of Women Harassment Act. Thereafter it was informed to the first respondent by the second respondent and the first respondent passed the impugned order dated 18.07.2020, thereby sentenced the petitioner in all the petitions, to undergo imprisonment for remaining period of bond executed by the petitioners herein ie., upto 01.07.2021.

3. The learned counsel appearing for the petitioner in all the petitions raised a ground that the petitioners were not served with any show cause notice and they were not heard before passing orders as such, it is completely violation of principles of natural justice. Therefore, the impugned orders are illegal

and violation of procedure laid down under law. He also relied upon the order passed by this Court dated 19.03.2020 in CrI.O.P. No.6467 of 2019 in the case of Nedumaran Vs. The Sub Divisional Magistrate cum Revenue Divisional Officer and ors., and sought for quash of the impugned orders.

4. Per contra, the learned Additional Public Prosecutor would submit that the petitioner in all petitions are habitual offenders and have had very bad antecedent. Therefore, they were directed to execute bond under Section 110 of Cr.P.C., in order to keep peace for one year. While pending the same, again the petitioners involved in Crime No.1826 of 2020 registered for the offences under Sections 294(b), 341, 387 and 506(2) of IPC r/w Section 4 of Tamilnadu Prohibition of Women Harassment Act. Therefore, the first respondent cancelled the bond executed by the petitioner in all petitions and also convicted them for remaining period of bond executed by the petitioners. Therefore the orders passed by the first respondent do not warrant any interference from this Court and he prayed for dismissal of these petitions.

5. Heard Mr.S.Conscious Ilango, learned counsel appearing for the petitioner in all petitions and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondents in all petitions.

6. It is seen that the petitioner in all petitions had executed bond under Section 110 of Cr.P.C., before the first respondent in order to keep peace for the period of one year on 02.07.2020. While pending the said bond, again the petitioners involved in Crime No.1826 of 2020 registered for the offences under Sections 294(b), 341, 387 and 506(2) of IPC r/w Section 4 of Tamilnadu Prohibition of Women Harassment Act. Therefore, the first respondent passed the impugned orders under Section 122(1) (b) of Cr.P.C., thereby detained the petitioners for remaining period. 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."

7. It is seen from the impugned orders, the petitioners were never served with any notice and they were not given reasonable opportunity of hearing and as such the impugned orders passed by the first respondent are liable to be set aside. Further it is also seen that no enquiry was conducted to ascertain the reasons and ground for violation of the bond executed by the petitioners. 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 petitioners, 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 orders 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 petitioners and no hearing opportunity was given to the petitioners before cancelling the bond executed by them. The impugned detention orders revealed that no witnesses were examined in the presence of the petitioners and the petitioners did not cross examine those witnesses. The petitioners did not produce any evidence or document and no explanation was given by them. Without giving any opportunity to the petitioners, the detention orders were passed to undergo the detention for the balance period upto 01.07.2021. It is 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 orders are vitiated and the same are liable to be set aside.

9. Accordingly, all the Criminal Original Petitions are allowed and the impugned order dated 18.07.2020 passed in M.C.Nos.14, 15 and 13 of 2020 on the file of the first respondent is hereby quashed. The petitioner in all the petitions are directed to be set at liberty forthwith unless their presence is required in connection with any other case. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Divisional Magistrate
cum Revenue Divisional Officer,
Perambalur,
Perambalur District.
2. The Inspector of Police,
Perambalur Police Station,
Perambalur.
3. The Superintendent,
Central Prison,
Thiruchirappalli,
Trichy District.
4. The Public Prosecutor
Madras High Court,
Chennai.

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SSV(CO)
KKV/14/09/2020