

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.11795 of 2020
and W.M.P.Nos.14508 & 14509 of 2020

Barani @ Baranidaran,
S/o.Maduraiveeran,
No.4/105, MGR Road,
Singaperumal Kovil Village,
Chengalpattu District.

...Petitioner

Vs.

1. The Revenue Divisional
Officer/Executive,
Magistrate,
Chengalpattu.

2. The Inspector of Police,
H-3, Maraimali Nagar Police Station,
Chengalpattu District.

3. The Superintendent,
Central Prison,
Puzhal, Chennai - 66

...Respondents

PRAYER: Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Ceriorarified Mandamus to call for the records in Order No.M.C.A1/03/2020 dated 12.08.2020 on the file of the first respondent and quash the same.

For Petitioner : Mr.A.Damodaran

For Respondents

For R1 : Mr.M.Elumalai,
Additional Government Pleader

For R2 & R3 : Mr.S.Karthikeyan
Additional Public Prosecutor.

ORDER

This petition has been filed challenging the order dated 12.08.2020 vide reference No.M.C.A1/03/2020, on the file of the first respondent, thereby convicted the petitioner to undergo imprisonment for the period of 159 days.

2. The learned counsel appearing for the petitioner would submit that on 08.01.2020, the second respondent registered a case as against the petitioner under Section 110 of Cr.P.C., to maintain peace in the locality and for the security of good behaviour. Therefore, the petitioner was directed to execute the bond for the period of one year from 08.01.2020 to 07.01.2021 for the purpose of maintaining peace and for the security of good behaviour. Thereafter the second respondent registered another FIR in Crime No.3971 of 2020 as against the petitioner for the offences under Section 294(b) of IPC and Section 7(1)(a) of CLA Act. Pursuant to which, the petitioner was arrested and remanded to judicial custody on 01.08.2020. The petitioner was put in the District Jail, Chengalpattu. Thereafter, he was released on bail by an order dated 06.08.2020 in C.M.P.No.3085 of 2020 on the file of the learned Judicial Magistrate No.II, Chengalpattu. On 12.08.2020, the first respondent on exercising his power under Section 122(1)(a) of Cr.P.C., cancelled the bond executed by the petitioner and directed to remand the petitioner to judicial custody for remaining period of 159 days. Thereafter, the petitioner was again arrested and remanded in the Central Prison, Puzhal on 15.08.2020.

2.1. He further submitted that the impugned order is illegal, against law besides being arbitrary and issued in violation of Article 14 and 16 of the Constitution of India. This Court and the Hon'ble Supreme Court of India repeatedly directed the Executive Magistrate that the opportunity of hearing has to be given before passing the order under Section 122(1) of Cr.P.C. Even then the guidelines issued by this Court were never followed by the first respondent and without application of mind, passed the impugned order and remanded the petitioner to prison. In support of his contention, he relied upon the judgment of this Court in batch of cases in CrI.R.C.No.137 of 2019 in the case of P.Sathish @ Sathish Kumar Vs. State".

3. The Additional Public Prosecutor appearing for the respondents police submitted that the petitioner is an habitual offender, who was directed to execute bond to maintain peace and security for good behaviour. Accordingly, the petitioner executed the bond for the period of one year from 08.01.2020 to 07.01.2021. Again the petitioner involved in another case in Crime No.3971 of 2020 registered for the offences under Section 294(b) of IPC and Section 7(1)(a) of CLA Act. Pursuant to the said crime, the petitioner was arrested and remanded to judicial custody on 01.08.2020. Therefore, the second respondent submitted a representation and requested to cancel the bond executed by the petitioner herein. On such request, the first respondent after perusal of the documents cancelled the bond and convicted the petitioner for remaining period of 159 days.

Therefore there is absolutely no illegality or infirmity in the order passed by the first respondent and prayed for dismissal of the petition.

4. Heard Mr.A.Dhamodaran, learned counsel appearing for the petitioner, Mr.M.Elumalai, learned Additional Government Pleader appearing for the first respondent, and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondents 2 & 3.

5. The petitioner executed bond to maintain peace and for the purpose of security of good behaviour in favour of the first respondent for the period of one year ie., from 08.01.2020 to 07.01.2021. Thereafter he was again arrested in pursuant to the FIR registered in Crime No.3971 of 2020 for the offences punishable under Section 294(b) of IPC and Section 7(1)(a) of CLA Act, on the file of the second respondent. Though he was released on bail in C.M.P.No.3085 of 2020 by an order dated 06.08.2020, by the learned Judicial Magistrate No.II, Chengalpattu, the second respondent requested the first respondent to cancel the bond executed by him and requested for conviction under Section 122(1)(a) of Cr.P.C., for the reason that he violated the bond executed by him. On receipt of the said request, the first respondent passed the impugned order thereby, convicting the petitioner for the remaining period of 159 days.

6. On perusal of the impugned order, there is no iota of evidence to show that the petitioner was issued summons and called upon him to submit his explanation. In this regard, this Court issued guidelines to be followed while passing order under Section 122(1) of Cr.P.C., in CrI.R.C.No.137 of 2019 batch in the case of P.Sathish @ Sathish Kumar Vs. State", as follows :-

"14. In the conspectus of the above, this Court is of the considered view that the suggestions/guidelines as given by the learned Senior Advocate and others on one side and the learned Public Prosecutor on the other side have been considered by this Court and the following legal principles emerge on such consideration:

1. Notice to be sent to the person by the Executive Magistrate to show cause as to why action under Section 122(1)(b) of Cr.P.C should not be taken for breach of the bond executed under Section 117 Cr.P.C on a date fixed.

2.At the enquiry, the Executive Magistrate should furnish the person the materials sought to be relied upon, including statements of witnesses, if any, in the vernacular (if the person is not knowing the language other than his mother tongue).

3.If the person wishes to engage an Advocate to represent him at the enquiry, an opportunity to have a counsel of his choice should be provided to him.

4.The Executive Magistrate shall inform the person about his right to have the assistance of a lawyer for defending him in the enquiry.

5.The enquiry shall be conducted by the Executive Magistrate on the notified date or such other date as may be fixed and the person should be allowed to participate in the same.

6.At the enquiry, an opportunity should be given to the person to:

- (i)Cross-examine the official witnesses, if any and
- (ii)produce documents and witnesses, if any, in support of his case.

7.Such Executive Magistrate or his successor in office, should then, apply his mind on the materials available on record, in the enquiry, and pass speaking order.

8.An order u/s.122(1)(b) of Cr.P.C should contain the grounds upon which the Executive Magistrate is satisfied that the person has breached the bond.

9.A copy of the order should be furnished to the person along with the materials produced at the enquiry.

10.The enquiry, as far as possible shall be completed within 30 days and at no circumstance, the enquiry shall be adjourned unnecessarily. The advocates, who appear on behalf of the persons concerned, are expected to co-operate with the enquiry process for its expeditious completion.?

The above legal principles as evolved to be followed by all the Executive Magistrates concerned in future. In order to infuse uniform approach by all the Executive Magistrates concerned, the learned State Public Prosecutor is directed to circulate this decision to the Government and the Government shall act upon the principles as laid down above and issue necessary instructions to all the designated Executive Magistrates to follow the principles strictly while exercising their power under Section 122 (1) (b) of Cr.P.C."

Admittedly in the case on hand no showcase notice was issued to the petitioner and no opportunity of hearing was given to the petitioner. Further no one was informed about the conviction order passed by the first respondent herein. Therefore it amounts to violation of Article 14 and 16 of the Constitution of India and the impugned order is illegal.

7. In view of the above facts and circumstances, this Criminal Original Petition stands allowed and the impugned order dated 12.08.2020 passed in reference No.M.C.A1/03/2020, on the file of the first respondent is hereby quashed. The petitioner viz., Barani @ Baranidaran, M/aged about 40 years, S/o.Maduraiveeran, 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 petitions are closed. No orders as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Revenue Divisional
Officer/Executive,
Magistrate,
Chengalpattu.

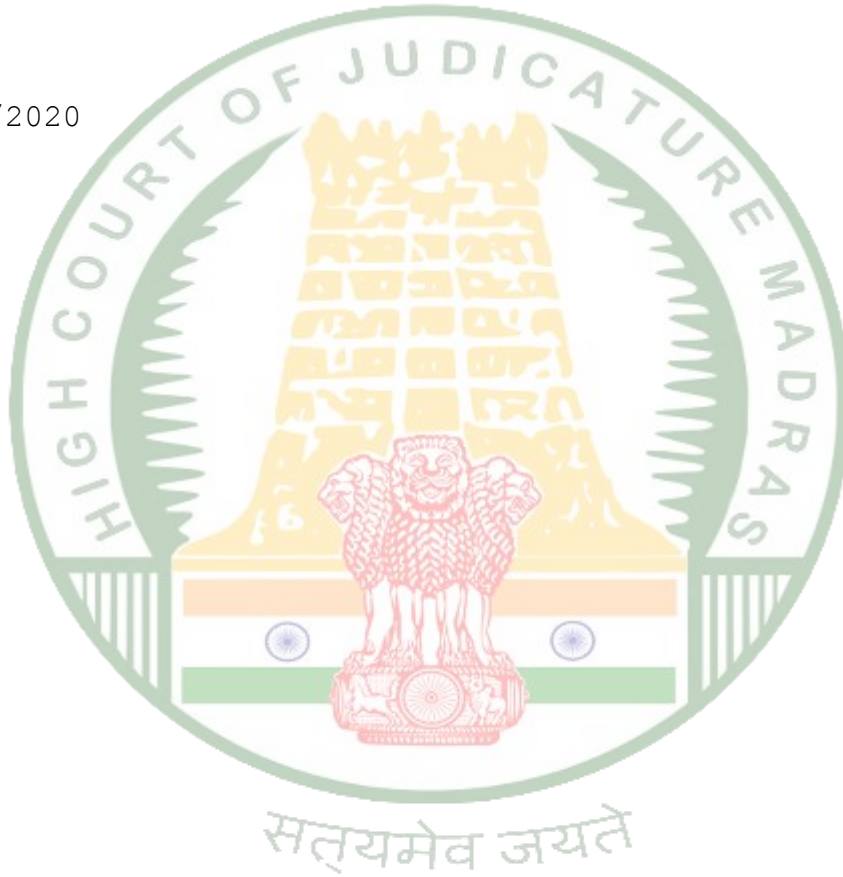
2. The Inspector of Police,
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4. The Public Prosecutor,
High Court,
Madras.

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JP(CO)
KKV/23/09/2020



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