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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26.02.2020

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

CrI.R.C (MD) No.92 of 2020

and

CrI.MP (MD) No.820 of 2020

Shanmugam @ Semmayee

: Petitioner/ Accused

Vs.

- 1.The Sub Divisional Magistrate-cum-
Revenue Divisional Officer,
Pudukkottai.
- 2.The Sub Inspector of Police,
Town Police Station, Pudukkottai.
Pudukkottai District.

: Respondents/Complainants

Prayer: Criminal Revision has been filed under section 397 r/w 401 of Criminal Procedure Code, against the order passed in Na.Ka.No.A3/97/2020, dated 07.01.2020 by the 1st respondent.

For Petitioner

: Mr.S.Deenadhayalan

For Respondents

: Mr.A.P.G Ohm Chairma Prabhu

Government Advocate(Criminal side)

ORDER

This criminal revision is directed against the order passed in Na.Ka.No.A3/97/2020, dated 07.01.2020 by the 1st respondent.

2.The petitioner frequently involved in the criminal cases and a report was initiated in Laid Information Report and the same was forwarded to the 1st respondent for further action and after perusal of the records, the 1st respondent issued summon under section 111 of the Criminal Procedure Code and directed the petitioner to execute a bond with two sureties for a sum of Rs.1,00,000/- each under section 107 of the Criminal Procedure code in M.C No.76 of 2019 for a period of one year for keeping peace and maintaining good behaviour. But unfortunately, after executing the bond, on 07.11.2019 again the petitioner involved in a criminal offence and a case was registered by the respondent police in Crime No.336 of 2019 for the offence under section 7 r/w 25(i) of Arms Act and he was arrested by the respondent police and remanded to judicial custody on the same day and thereafter, the petitioner moved bail petition before the Principal Sessions Court, Pudukkottai, in Cr.MP No.3166 of 2016 and the same was ordered on 12.11.2019. In the interregnum, since the petitioner breached the bond executed before the 1st respondent for keeping peace and maintaining good behaviour, a report was sent to the 1st respondent to take action against the petitioner under section 122(i) of the Criminal Procedure Code and subsequently, the Superintendent of Police, Pudukkottai District, on 24.12.2019 sent a communication to the District Collector, Pudukkottai District to take appropriate steps to cancel the bond executed by the



petitioner. Thereafter, the 1st respondent passed the impugned order, dated 07.01.2020. Aggrieved over the same, the petitioner is before this court.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The main contention raised on the side of the petitioner is that the 1st respondent did not provide reasonable opportunity to defend the case before passing the impugned order. It is the further contention of the petitioner that when without giving reasonable opportunity to defend his case, any order passed by the Executive Magistrate can be set aside. For that, the learned counsel for the petitioner submitted the following judgments:-

01. AIR (33) 1946 Allahabad 333 (Narain Sahai and others Vs. Emperor);

(02). Order of this Court passed in CrI.OP(MD) No.6841 of 2015, dated 10.04.2015 (Malathi Vs. State);

(03). 2016 CRI.L.J. 4603 (Bala Vs. Administrative Executive Magistrate, Trichy City);

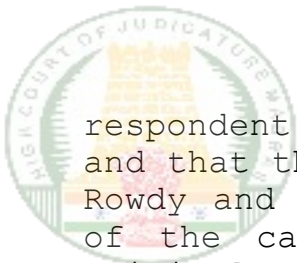
(04). Order of this court passed in CrI.O.P(MD) No.7591 of 2017, dated 21.04.2017 (Rajkumar Vs. State);

(05). 2017(1) TLNJ 516 (Criminal) (Sivashanmuga Sundaram Vs. The Executive Magistrate/Deputy Commissioner of Police L & O, Tirunelveli and two others);

(06). Order of this Court made in CrI.R.C.No.505 of 2017, dated 05.07.2017 (Selvam @ Selvaraj Vs. The Executive Magistrate-cum-Deputy Commissioner of Police, (Law & Order, Crime and Traffic), Tiruppur City and another);

(07). Order of this court passed in CrI.MP(MD) No.7580 of 2018 in CrI.RC(MD) No.542 of 2018, dated 25.09.2018 (Thangam (Mathalai Muthu Vs. The Executive First Class Magistrate-cum-Revenue Divisional Officer, Dindigul); and

(08). Order of this court passed in CrI.MP(MD) No.8387 of 2018 in CrI.RC(MD) No.585 of 2018, dated 28.02.2019 (Amalraj Vs. The Executive First Class Magistrate-cum-Revenue Divisional Officer, Dindigul).



respondent has rightly passed the impugned order, dated 07.01.2020 and that the petitioner is the habitual offender and History Sheeted Rowdy and many criminal cases were registered against him and many of the cases are still pending and prays for dismissal of the criminal revision.

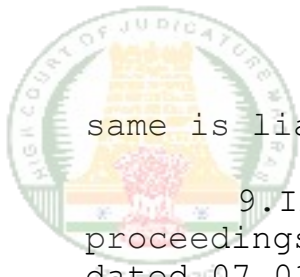
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6. A careful perusal of the impugned order would show the non-application of mind of the 1st respondent. Merely because certain cases have been registered against the petitioner, the same cannot be said to be sufficient ground leading to prove the breach of bond to the satisfaction of the Magistrate concerned, that too without hearing the affected party. The close reading of Section 122(1)(b) Cr.P.C would clearly show that the Executive Magistrate shall give an opportunity to the petitioner and apply his judicial mind and arrive at his satisfaction that the petitioner had breached the security bond executed by him to keep good behaviour and he must also record the grounds of such proof. As per Section 122(1)(b) Cr.P.C, the 1st respondent/Executive Magistrate must record his grounds of satisfaction and he must say whether sufficient cause has been established. But he did not do so. It is complete non-application of mind. The 1st respondent passed the impugned order mechanically.

7. At this juncture, it is pertinent to mention the decision reported in **2016(2) TLNJ 228 (Criminal) (Bala @ Balakrishnan and Administrative Executive Magistrate, Trichy City and others,** wherein, it has been held as follows:-

"As per Section 122(1)(b) of Cr.P.C., the Executive Magistrate before ordering a person to be jailed, he shall be satisfied that the person has breached the bond conditions, the Executive Magistrate must also record the grounds for such proof. That means, he must apply his mind and pass orders. He cannot pass order mechanically. But he need not write an elaborate Judgment like us. His orders must show atleast briefly the grounds upon which, he has satisfied that the person has breached the bond executed by him. Under Section 122(1)(b) of Cr.P.C., if the said satisfaction is not recorded, it will be presumed that the detention authority sending a person to jail is arbitrary, mechanical, not fair, unjust. The detention order must disclose the grounds of proof, otherwise, the Court cannot see what has transpired in the mind of the Executive Magistrate in passing the detention order, more particularly, when these orders are revisable by the Sessions Judges."

8. Keeping in view of the above facts, this court is of the considered view that the impugned order has not been passed in accordance with law and has been passed mechanically. From the legal position stated above, it is clear that the impugned order has been passed without following the principles of natural justice and the



same is liable to be set aside.

9. In fine, this Criminal Revision is **allowed** and the impugned proceedings passed by the 1st respondent in Na.Ka.No.A3/97/2020, dated 07.01.2020 is set aside. The Superintendent of Central Prison, Trichirappalli, is directed to set at liberty the revision petitioner, if his further detention is no longer required in connection with any other case or proceedings. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

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To,

1. The Sub Divisional Magistrate-cum-
Revenue Divisional Officer,
Pudukkottai.

2. The Sub Inspector of Police,
Town Police Station,
Pudukkottai.
Pudukkottai District.

3. The Superintendent of Prison,
Central Prison,
Trichy-20.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO Mr.S.Deenadhayan, Advocate, Sr.No.4072/2020

Order made in
Crl.R.C (MD) No.92 of 2020
25.02.2020

sma/27/02/2020/4p/6c-IT