



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.122 of 2020

and

Crl.MP(MD)No.1269 of 2020

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Raja @ Ammaiappatti Raja

: 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 and 401 of Criminal Procedure Code, against the order passed in Na.Ka.No.A3/7028/2019, dated 22.01.2020 by the 1st respondent.

For Petitioner

: Mr.G.Mathavan

For Respondents

: Mr.A.P.G Ohm Chairma Prabhu
Government Advocate
(Criminal side)

O R D E R

This criminal revision is directed against the order passed in Na.Ka.No.A3/7028/2019, dated 22.01.2020 by the 1st respondent.

2.The petitioner frequently involved in criminal cases and a report was initiated in Laid Information Report on 11.10.2019 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.15,000/- each under section 107 of the Criminal Procedure Code in M.C No.204 of 2019 for a period of one year for keeping peace and maintaining good behaviour. But unfortunately, after executing the bond, on 19.10.2019 again the petitioner involved in a criminal offence and a case was registered by the respondent police in Crime No.239 of 2019 for the offence under sections 339 and 402 IPC and he was arrested by the respondent police and remanded to judicial custody. Thereafter, the 1st respondent passed the impugned order,



dated 22.01.2020. 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.

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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 Crl.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);

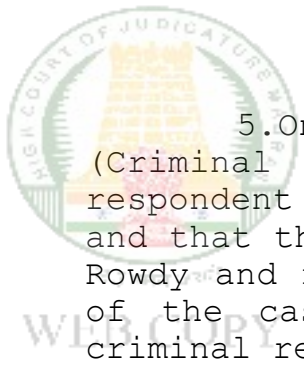
(04). Order of this court passed in Crl.O.P(MD) No.7591 of 2017, dated 21.04.2017 (Rajkumar Vs. State);

(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 Crl.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 Crl.MP(MD) No.7580 of 2018 in Crl.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 Crl.MP(MD) No.8387 of 2018 in Crl.RC(MD) No.585 of 2018, dated 28.02.2019 (Amalraj Vs. The Executive First Class Magistrate-cum-Revenue Divisional Officer, Dindigul).



5. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondents argued that the 1st respondent has rightly passed the impugned order, dated 22.01.2020 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.

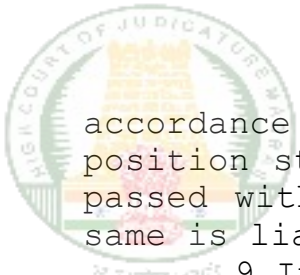
6. A careful perusal of the impugned order would show the non-application of mind of the 1st respondent. Merely because certain cases have been registered against the petitioner, the same cannot be said to be sufficient ground leading to prove the breach of bond to the satisfaction of the Magistrate 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."

<https://hcservices.ecourts.gov.in/hcservices/>

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.A3/7028/2020, dated 22.01.2020 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 (CS II)

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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.

+1 CC to M/s.G.MATHAVAN, Advocate (SR-9025[F] dated 27/02/2020)

Cr1.R.C (MD) No.122 of 2020
27.02.2020

KK/28.02.2020/4P-6C