



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.02.2020

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

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Crl.R.C(MD)No.121 of 2020

and

Crl.MP(MD)No.1083 of 2020

Thigattakkani @ Sekkandi

: Revision Petitioner

Vs.

1.The Sub Collector and Sub Divisional Magistrate,
Periyakulam,Theni District.

2.The Inspector of Police,
Ka.Villakku Police Station,
Aundipatti,Theni District.

3.The Superintendent of Prison,
Central Prison,
Madurai.

: Respondents

Prayer: Criminal Revision Petition has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the order passed by the Sub Collector and Sub Divisional Magistrate, Periyakulam, in Na.Ka.No.A4/443/2020, dated 24.01.2020.

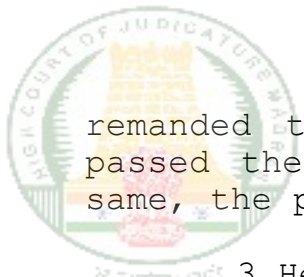
For Petitioner : Mr.C.Susikumar

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 by the Sub Collector and Sub Divisional Magistrate, Periyakulam, in Na.Ka.No.A4/443/2020, dated 24.01.2020.

2.The petitioner has frequently involved in the criminal cases and a report was initiated in Laid Information Report in LIR No.13 of 2019 on 25.11.2019 by the second respondent and the same was forwarded to the first respondent for further action and after perusal of the records, the first respondent issued summon and directed the petitioner to execute a bond with two sureties for a sum of Rs.5,000/- each for a period of one year for keeping peace and maintaining good behaviour. But unfortunately, after executing the bond on 21.01.2020 again the petitioner involved in a criminal offence and a case was registered by Ka.Villakku Police Station in Crime No.9 of 2020 for the offence under section 8(c), 20(b)(ii)(A) NDPS Act, 1985 and the petitioner was arrested on 21.01.2020 and



remanded to judicial custody. Subsequently, the first respondent passed the impugned order, dated 24.01.2020. 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 first respondent did not provide reasonable opportunity to defend the case of the petitioner before passing the impugned order. It is the further contention of the petitioner that when without giving reasonable opportunity to defend the case of the petitioner, 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);

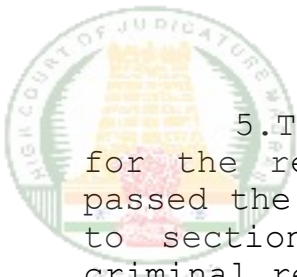
(04). Order of this court passed in CrI.O.P(MD) No.7591 of 2017, dated 21.04.2017 (Rajkumar Vs. State);

(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).



5. The learned Government Advocate (Criminal side) appearing for the respondents argued that the first respondent has rightly passed the impugned order and that the petitioner would be subjected to section 122(1)(b) of Cr.P.C and prays for dismissal of the criminal revision.

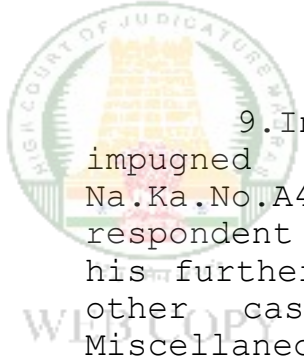
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6. A careful perusal of the impugned order would show the non-application of mind of the first respondent. Merely because certain cases have been registered against the petitioner, the same cannot be said to be sufficient ground leading to prove the 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 her to keep good behaviour and he must also record the grounds of such proof. As per Section 122(1)(b) Cr.P.C, the first 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 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 Petition is **allowed** and the impugned order passed by the first respondent in Na.Ka.No.A4/443/2020, dated 24.01.2020 is set aside. The 3rd respondent 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 (Crl.side)

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Sub Assistant Registrar(CS)

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To,

- 1.The Sub Collector and Sub Divisional Magistrate,
Periyakulam,Theni District.
- 2.The Inspector of Police,
Ka.Villakku Police Station,
Aundipatti,Theni District.
- 3.The Superintendent of Prison,
Central Prison,Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

Order made in
Crl.R.C (MD) No.121 of 2020
18.02.2020

sma/20/03/2020/4p/5c