



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE : 06.08.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

CrI. R.C.(MD)No.332 of 2020
and CrI.MP(MD)No.2812 of 2020

Gurusamy

.. Petitioner / Detenue

Vs.

1.The Sub Divisional Executive Magistrate
and Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Aruppukottai, Virudhunagar District.

2.The Inspector of Police,
West Police Station,
Viruthunagar District.

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

.. Respondents

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records connected with the order passed by the respondent No.1 in M.C.No.447 of 2019 dated 17.02.2020 and set aside the same as illegal.

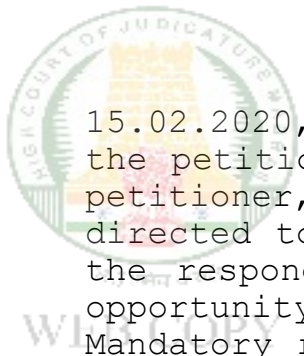
For Petitioner : Mr.R.Alagumani
For Respondents : Mr.K.Dinesh Babu,
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order passed in M.C.No.447 of 2019 dated 17.02.2020, on the file of the first respondent.

2.The petitioner executed a bond under Section 110 Cr.P.C., in Crime No.992 of 2019, Virudhunagar West Police Station. The order under Section 110 of Cr.P.C., in Crime No.992 of 2019 was passed against the petitioner. Against the order, the petitioner approached this Court for setting aside the impugned order.

3.On the side of the petitioner, it is stated that on
<https://hcservices.ecourts.gov.in/hcservices/>



15.02.2020, the 1st respondent issued summons for the appearance of the petitioner. On 17.02.2020, without giving an opportunity to the petitioner, the first respondent passed the impugned order and directed to detain the petitioner. On 16.10.2020, it is stated that the respondent did not furnish any copies of the document and no opportunity was given to the petitioner to put forth his case. Mandatory requirements were not properly followed by the respondent and prayed the impugned order to be set aside.

4. On the side of the respondents, it is stated that the petitioner is a habitual offender and history sheeted accused and the history sheet was maintained in H.S.No.667 of 2007. Since he frequently involved in various crime activities, on the request of the second respondent after conducting proper enquiry, the first respondent directed the petitioner to execute a bond for security of Rs.1,00,000/- (Rupees One Lakh only) under Section 110 Cr.P.C., for maintaining peace and good behavior for a period of one year. Accordingly the petitioner executed a bond on 17.10.2019. Thereafter, the second respondent sent a report dated 07.01.2020 stating that on 04.01.2020, again the petitioner and two others involved in a criminal offence and that a case was registered in Crime No.5 of 2020 for the offence under Section 341, 294(b) and 387 of IPC and requested the first respondent to initiate action against the petitioner under Section 122(1)(b) of Cr.P.C.

5. On the side of the petitioner, it is stated that a letter was sent to the detenu, while he was in custody in the prison, he gave vakalath to Advocate. The advocate just filed the vakalath and he did not participate in any enquiry. The petitioner was produced before the Revenue Divisional Officer only once on 14.02.2020. It is stated that the petitioner was not served with the copy of the documents. No opportunity was given to the petitioner to participate in the enquiry. The procedures were not duly followed and prayed the detention order to be set aside.

6. On the side of the respondents, it is stated that the earlier version of the petitioner is that the summon was served on the petitioner on 15.02.2020. Without giving an opportunity for the petitioner, the impugned order was passed whereas the CD files reveals that the petitioner was present. The petitioner counsel was present on 23.01.2020. The petitioner and his counsel appeared on 27.01.2020 and again on 14.02.2020, 15.02.2020 and 17.02.2020, the petitioner was given sufficient opportunity to the petitioner. The petitioner filed his detailed statement on 17.02.2020. All the procedures are correctly followed and there is no necessity to set aside the impugned order.

7. A perusal of the records reveals that the proceedings under Section 110 of Cr.P.C., was taken against the petitioner in Crime No.992 of 2018. In M.C.No.447 of 2019, the petitioner executed a



bond on 17.10.2019. The second respondent sent a report dated 07.01.2020 stating that again the petitioner involved in another offence in Crime No.5 of 2020 under Sections 341, 294(b) and 387 of IPC and was remanded on 04.01.2020. The Inspector of Police, Virudhunagar West Police Station have requested for initiating a proceedings against the petitioner under Section 122(1)(b) of Cr.P.C. The petitioner was called upon for enquiry on 23.01.2020. On 14.01.2020, the notice was served upon the petitioner, who was in custody in Crime No.5 of 2020 through Superintendent of Prison. On the same date, the petitioner engaged an Advocate. On the same date, the petitioner was released on his own bond. It is seen that on 23.01.2020, an advocate Mr.Venkatesh appeared for the petitioner and he filed a vakalath. The matter was adjourned to 27.01.2020. On that date, the petitioner appeared along with his advocate and filed a petition for adjournment. Another case in Crime No.60 of 2019 under Section 294(b), 324 and 506(ii) of IPC was registered against the petitioner and the petitioner was again arrested on 04.02.2020. It is seen that the proceedings under Section 122(1)(b) of Cr.P.C., was again adjourned to 14.02.2020 and summons were served to the petitioner on 11.02.2020, who was in the District Jail. Again the petitioner was produced on 14.02.2020 and the matter was adjourned to 15.02.2020 and then to 17.02.2020. On 17.02.2020, the petitioner filed an objection letter to the proceedings under Section 110 of Cr.P.C. On 17.02.2020, on the basis of the record, the impugned order was passed.

8.It is seen that sufficient opportunity was given to the petitioner. There is no procedural discrepancies in the impugned order. But the original offence is of the year 2018. The bond was executed only in the year 2019. The petitioner is in custody for approximately 9 months. He almost served $\frac{3}{4}$ of the period mentioned of the detention order.

9.In the above circumstances, the Criminal Revision Case is allowed and the impugned order in M.C.No.447 of 2019 dated 17.02.2020, on the file of the first respondent is set aside. The petitioner is to be released forthwith connected MP is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Mrn

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate /

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



To

1.The Judicial Magistrate No.1, Virudhunagar District.

2.The Sub Divisional Executive Magistrate
and Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Aruppukottai, Virudhunagar District.

3.The Inspector of Police,
West Police Station,
Viruthunagar District.

4.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

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

Crl. R.C. (MD) No.332 of 2020
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SMA/14/08/2020/4P/6C