



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 23.11.2020

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.636 of 2020
and Crl.M.P.(MD)No.6099 of 2020

Muthukumar @ Sali Muthukumar

.. Petitioner

Vs.

1.The Executive Magistrate Cum
Deputy Commissioner of Police,
Law and Order, Madurai City.

2.The Inspector of Police,
B3, Theppakulam Police Station,
Madurai City.

.. Respondents

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records relating to the order passed in M.C.No.1457/Ni.Sa.Na and Ka.TU.Aa/M.MA/2019 dated 18.08.2020 by the 1st Respondent detaining the petitioner and to set aside the same.

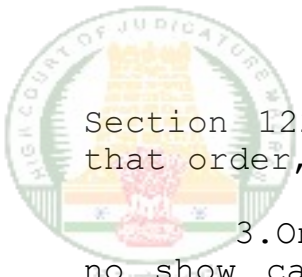
For Petitioner
For Respondents

: Mr.V.Vishnu
: Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

This Criminal Revision Case has been filed to set aside the order passed in M.C.No.1457/Ni.Sa.Na and Ka.TU.Aa/M.MA/2019 dated 18.08.2020 by the first respondent.

2. The case of the prosecution is that on 21.12.2019, a case was registered against the petitioner in Crime No.124 of 2019 under Section 109 Cr.P.C. and the petitioner was called upon by the first respondent. After enquiry, on 24.12.2019, the petitioner executed a bond in M.C.No.1457 of 2019 for keeping peace for a period of one year. Subsequently, on 02.08.2020, the petitioner involved in another offence in Crime No.1056 of 2020 under Section 399 I.P.C.. On the request of the second respondent, the first respondent issued a P.T. warrant to the petitioner for production of the petitioner. The petitioner was produced before the first respondent. After enquiry, on 18.08.2020, the first respondent passed an order under



Section 122(1)(b) Cr.P.C. read with Section 117 Cr.P.C.. Against that order, the petitioner preferred this Criminal Revision.

3. On the side of the revision petitioner, it is stated that no show cause notice was issued before issuing P.T. Warrant. On 18.08.2020, no witness was cross-examined and the impugned order was passed on the same day. The order was passed without following the due process of law. No proceedings can be initiated under Section 122(1)(b) Cr.P.C. on the basis of a bond executed under Section 110 Cr.P.C. No opportunity was provided to the petitioner to put forth his case. Grounds for satisfaction of the first respondent was not recorded. Copies were not furnished to the petitioner. No public witness was examined.

4. On the side of the revision petitioner, it is further stated that the Deputy Commissioner is not having power to pass an order under section 122(1)(b) Cr.P.C. A judgment of this Court passed in Crl.R.C.No.78 of 2020, dated 25.09.2020, is referred by the learned counsel for the petitioner and prayed the impugned order to be set aside.

5. On the side of the respondent, it is stated that power was already delegated to the Deputy Commissioner under Section 470 Cr.P.C and that power was not set aside by any order or judgment of the Court and the matter is referred to the Larger Bench of this Court and is still pending for decision. There is no procedural irregularity in the impugned order. The petitioner was furnished with the copies of the document. Witnesses were examined in the presence of the petitioner. Opportunity for cross-examination was given to the petitioner. The petitioner cross-examined three witnesses and prayed for adjournment for cross-examination of other two witnesses. But, the petitioner reported that he has no cross examination regarding the other witnesses, on 18.08.2020. There is no lapse in the procedures followed by the first respondent and prayed for dismissal of the petition.

6. Since the power of the Deputy Commissioner is yet to be decided before the Larger Bench of this Court, this Court is not inclined to pass any comments on that issue.

7. It is seen that the petitioner was given opportunity to cross-examine the witnesses. It is seen that copies were already furnished to the petitioner. But, considering the nature of offence and considering the period of incarceration already undergone by the petitioner, this Court is inclined to set aside the impugned order. In the above circumstances, the impugned order, dated 18.08.2020, in M.C.No.1457/Ni.Sa.Na and Ka.TU.Aa/M.MA/2019, passed by the first respondent, is hereby set aside. This Criminal Revision Case is allowed. The petitioner is directed to be released forthwith,



unless his presence is required in any other case. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar (CO)

/ /2020

Sub Assistant Registrar(CS)

Ls/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/litigant concerned.

To

- 1.The Executive Magistrate Cum
Deputy Commissioner of Police,
Law and Order, Madurai City.
- 2.The Inspector of Police,
B3, Theppakulam Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Superintendent,
District Prison, Theni.

Crl. R.C. (MD) No.636 of 2020
23.11.2020

—
ss (CO)

KK(24.11.2020) 3P 5C