



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.02.2020

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

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Crl.R.C (MD) No.971 of 2019
and
Crl.MP (MD) No.11480 of 2019

Saravanakumar : Petitioner/Detenu

Vs.

1.The Sub Divisional Executive Magistrate/
The Revenue Divisional Officer,
Aruppukottai,
Virudhunagar District.

2.The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.

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

: Respondents/Complainants

Prayer: Criminal Revision has been filed under section 397 and 401 of Criminal Procedure Code, against the order passed in MC No.385/2019, dated 23.09.2019 by the first respondent and set aside the same.

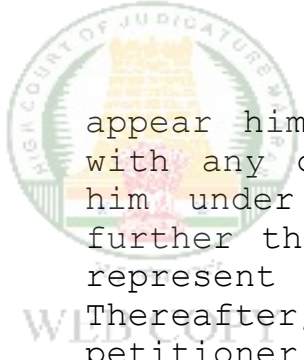
For Petitioner : Mr.R.Alagumani

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 MC No.385/2019, dated 23.09.2019 by the first respondent.

2.It is the case of the petitioner that the 2nd respondent police foisted cases against him in Crime No.188 of 2018 for the offence under sections 147, 148, 302 IPC @ 148, 149, 302 IPC and in Crime No.282 of 2019 for the offence under section 8(c) r/w 20 (b) (11) (A) of NDPS Act and History Register No.06 of 2018 of East Police Station, Virudhunagar. The 1st respondent issued summons to



appear him on 27.08.2019 and on that day, he was not furnished with any document relating to the proceedings initiated against him under section 110(e) of the Criminal Procedure Code and further the respondents 1 and 2 did not permit the petitioner to represent his case before the 1st respondent through Advocate. Thereafter, the 2nd respondent foisted a false case against the petitioner in Crime No.251 of 2019 for the offence under section 110(3) of the Criminal Procedure Code and subsequently, the 1st respondent passed the impugned order, dated 23.09.2019. 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 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.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 23.09.2019 and that the petitioner is the habitual offender 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) CrI.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 MC No.385/2019, dated 23.09.2019 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(AD-II)

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Sub Assistant Registrar(CS)

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To,

1. The Sub Divisional Executive Magistrate/
The Revenue Divisional Officer,
Aruppukottai,
Virudhunagar District.

2. The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.



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

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

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-9413[F] dated 28/02/2020)

Order made in
Crl.R.C (MD) No.971 of 2019
28.02.2020

svn(CO)
TR(28.02.2020)5P 6C