



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31.01.2020

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.945 of 2019

and

Crl.MP(MD)No.11235 of 2019

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Vengadeshwaran

: Revision Petitioner/Detenu

Vs.

1.The Sub Divisional Executive Magistrate/
The Revenue Divisional Officer,
Office of the Revenue Divisional Office,
Aruppukottai,
Virudhunagar District.
(Amended as per the order, dated
31.01.2020 made in Crl.MP(MD)
No.635 of 2020 in Crl.RC(MD)No.945
of 2019)

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

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

: Respondent

Prayer: Criminal Revision Petition has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the order in MC No.386/2019, dated 23.09.2019 passed by the 1st respondent and seeking to set aside the same.

For Revision Petitioner : Mr.R.Alagumani

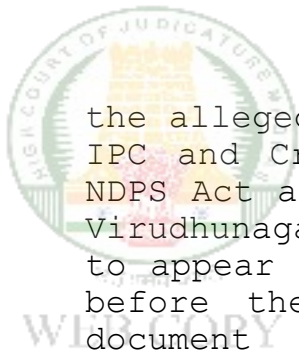
For Respondents : Mr.APG Ohm Chairma Prabhu
Government Advocate
(Criminal side)

O R D E R

This criminal revision is directed against the order in MC No.382/2019, dated 23.09.2019 passed by the 1st respondent.

2.It is the case of the petitioner that the 2nd respondent registered a case against the petitioner in Crime No.283 of 2019 for

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the alleged offence under sections 147, 148, 302 IPC @ 148, 149, 302 IPC and Crime No.283 of 2019 under section 8(c) r/w 20(b)(11)(A) NDPS Act and History Register No.95 of 2018 of East Police Station, Virudhunagar. The first respondent issued summons to the petitioner to appear on 27.08.2019 and on 27.08.2019, the petitioner appeared before the respondents 1 and 2, but they did not furnish any document relating to the proceedings initiated against the petitioner under section 110(e) of the Criminal Procedure Code. The respondents 1 and 2 under threat obtained the signatures in the documents and violated the personal liberty without following due process of law under Article 21 of the Constitution of India. Thereafter, the 2nd respondent foisted a false case against the petitioner in Crime No.252 of 2019 under section 110(e) of the Code of Criminal Procedure and the 2nd respondent recommended the 1st respondent to pass the impugned order against the petitioner and the 2nd respondent produced the petitioner before the 1st respondent for mala-fide intention to detain under section 122(1)(b) of the Criminal Procedure Code. Thereafter, on 23.09.2019 without providing any opportunity to the petitioner, the 1st respondent passed the impugned order for the alleged violation of surety bond. Subsequently, the 1st respondent cancelled the surety bond executed by the petitioner and directed him to detain upto 26.08.2020. Aggrieved over the same, the petitioner is before this court by way of criminal revision.

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 the case of the detenu, 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 first respondent has rightly passed the impugned order and that the petitioner would be subjected to section 120(1)(b) of Cr.P.C, and that no notice is required to be sent by the first respondent as Section 122 Cr.P.C., does not contemplate the issuance of such notice 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 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. A close reading of Section 122(1)(b) Cr.P.C would clearly show that the Executive Magistrate shall give an opportunity to the detenu and apply his judicial mind and arrive at his satisfaction that the detenu 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 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 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 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 taking off/deprivation of a person's personal liberty will not stand the test of law and the impugned order suffers from illegality, impropriety and it is vitiated. 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 proceedings issued by the first respondent in M.C.No.386, dated 23.09.2019 is set aside. The 3rd respondent is directed to set at liberty the detenu viz., 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

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/ /2020
Sub Assistant Registrar

To,

1.The Revenue Divisional Officer,
Aruppukottai,
Virudhunagar District.



- 2.The District Collector,
Virudhunagar.
- 3.The Superintendent of Police,
Virudhunagar.
- 4.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- 5.The Inspector of Police,
East Police Station,
Virudhunagar District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
CrI.R.C(MD)No.945 of 2019
31.01.2020

er
JM/VR/SAR 4/31.01.2020/5P/7C