

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.R.C.No.60 of 2021
and
CRL.M.P.No.1067 of 2021

Vilvavendhan ... Petitioner/accused

.Vs.

1. The Executive Magistrate cum
Deputy Commissioner of Police
Madhavaram District.

2. State by:
The Inspector of Police (Law & Order),
M5-Ennore Police Station,
Chennai District.
Serial No.320/2020 ... Respondents/Complainant

PRAYER : Criminal Revision case filed under Sections 397 & 401 or Cr.P.C. to set aside the detention order dated 09.11.2020 passed against the petitioner in the proceedings in M.P.No.20/2020 in Rc.No.320/Sec.Pro/DCP MVM/2020 on the file of the Executive Magistrate cum the Deputy Commissioner of Police, Madhavaram District.

For Petitioner : Mr.S.Silambuselvan

For Respondents : Mr.K.Madhan (Criminal side)
Government Advocate

O R D E R

Initially, the respondent police registered several cases against the petitioner in CR.Nos.574/2019, 321/2019 and 689/2019 and subsequently proceedings were initiated under Section 107 Cr.P.C and on 14.08.2020 the petitioner had given probation bond under Section 110 Cr.P.C. for the period of one year and on 12.10.2020 he had violated the probation bond and subsequently registered a case in Crime No.4013/2020 for the offences punishable under Sections 294(b), 341, 397 and 506 (ii) I.P.C., one of the conditions mentioned in the bond is that if he

breaches the condition imposed in the bond, the same would be cancelled and he has to undergo the punishment until the expiry of the bond. Therefore, learned Executive Magistrate cum Deputy Commissioner of Police examined the witnesses and passed the order under Section 122 Cr.p.C. on 09.11.2020 sentencing the petitioner until the expiry of bond period. Challenging the said order, the petitioner is before this Court.

2. The learned counsel for the petitioner would submit that the petitioner has been falsely implicated and without giving an opportunity to the petitioner to defend him, the bail bond was cancelled by the learned Executive Magistrate cum Deputy Commissioner of Police and thereby he is retained in judicial custody. He therefore prays to set aside the order passed by the learned Executive Magistrate cum Deputy Commissioner of Police.

3. The learned Government Advocate (Crl.side) would submit that he was produced before the Executive Magistrate cum Deputy Commissioner of Police on P.T. Warrant, which authority after examining the witnesses has passed the order dated 09.11.2020 and therefore there is no question of opportunity not being given to the petitioner.

4. A perusal of the order dated 09.11.2020 shows that witnesses were examined and during the custody of the petitioner, the first respondent ought to have given opportunity to the petitioner to engage a counsel on his own and if he failed to engage counsel he should have approached the concerned Legal Services Authority to appoint competent counsel to defend the case of the petitioner. But, in the case on hand, the first respondent has not taken any steps for providing legal assistance to the petitioner and therefore the petitioner is very much prejudiced without legal assistance being provided to him before passing final order. Therefore, under these circumstances, this Court is inclined to set aside the order passed by the first respondent.

5. Accordingly, the order passed by the first respondent dated 09.11.2020 is set aside and the matter is remanded back to the first respondent for fresh consideration and the first respondent is directed to instruct the petitioner to engage counsel on his own to prosecute his case and if the petitioner failed to engage counsel on his own, the first respondent is directed to approach the Legal Services authority to appoint legal aid counsel to defend the case of the petitioner. Thereafter, he is at liberty to proceed in accordance with law and dispose of the case, within a period of two months.

With the above directions, this Criminal Revision case is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Arr

To

1. The Executive Magistrate cum
Deputy Commissioner of Police
Madhavaram District.
2. The Inspector of Police (Law & Order),
M5-Ennore Police Station,
Chennai District.
Serial No.320/2020

Crl.R.C.No.60 of 2021

SR II(CO)
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