

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.02.2021
CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.113 of 2021
and
Crl.M.P.No.2241 of 2021

Abimon ... Petitioner/ Accused
..vs..

- 1.The Executive Magistrate-cum-
Deputy Commissioner of Police,
Madhavaram, Chennai - 110.
- 2.The Inspector of Police,
M-3, Puzhal Police Station,
Chennai - 600 066. ... Respondents/Complainant

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to call for the records pertaining to the order dated 13.01.2021 in M.P.No.01 of 2021 in R.C.No.534/Sec.Pro/DCP MVM 2020 in M-3 Puzhal P.S. SI.No.83/2020 u/s 110 Cr.P.C on the file of 1st respondent in M-3 Puzhal P.S.SI.No.83/2020 u/s 110 Cr.P.C on the file of the 2nd respondent by detaining the petitioner for the offence under Section 122(1)(b) of Cr.P.C and sentenced to undergo 304 days of imprisonment and set aside the same.

For Petitioner : Mr.S.Mohamed Ansar

For Respondents : Mr.K.Madhan
Government Advocate (Crl.Side)

O R D E R

Mr.K.Madhan, learned Government Advocate (Crl.Side) takes notice for the respondents. By consent of both parties, this Criminal Revision Case is taken up for final disposal at the admission stage itself.

2.This Criminal Revision Case has been filed against the order dated 13.01.2021 passed in M.P.No.01 of 2021 in R.C.No. 534/Sec.Pro /DCP MVM 2020, on the file of the first respondent, in and by which, the bail bond executed by the petitioner was cancelled and also directed the petitioner to undergo imprisonment for the remaining period in the bond period.

3.The case of the petitioner is that the second respondent police registered the case in Crime No.514 of 2018 for the offence under Section 294(b), 324, 506(ii) IPC and Crime No.600 of 2018 under Section 75 CP Act r/w 7(1)(a) CLA Act. As per the proceedings, the petitioner executed a bond under Section 110 Cr.P.C. During the said bond period, the petitioner violated the proceedings and involved in another case in Crime No.2 of 2021 for the offence under Sections 341, 294(b), 323, 324 and 506(ii) IPC and he was arrested and remanded to judicial custody on 02.01.2021 and produced before the Chief Judicial Magistrate, Madhavaram, Chennai. Thereafter, the first respondent initiated action against the petitioner under Section 122(1)(b) Cr.P.C for the breach of bond executed by the petitioner under Section 110 Cr.P.C within 49 days. Challenging the said order, the petitioner is before this Court.

4.The learned counsel for the petitioner would submit that the petitioner was not involved in any offence and a false complaint has been foisted against him and he was arrested and remanded to judicial custody on 02.01.2021. He would further submit that while the petitioner was in custody, on Prisoner's Transit Warrant, he was produced before the second respondent. However, the second respondent without affording any opportunity to the petitioner and without examining the witnesses, passed an order under Section 122(1)(b) Cr.P.C and cancelled the bail bond executed by the petitioner and imposed sentence of imprisonment for the remaining period.

5.The learned Government Advocate (Crl.Side) would submit that after providing sufficient opportunity only, the petitioner was produced before the second respondent for enquiry. At the time of trial, the petitioner has not raised any request regarding legal assistance, but, now, the petitioner has raised the said objection. Hence, there is no merit in this case and the same may be liable to be dismissed.

6. Heard the learned counsel on either side and perused the materials available on record.

7. Admittedly, a case has been registered against the petitioner in in Crime No.514 of 2018 for the offence under Section 294(b), 324, 506(ii) IPC and Crime No.600 of 2018 under Section 75 CP Act r/w 7(1)(a) CLA Act and on execution of bail bond, he was involved in another case in Crime No.2 of 2021 for the offence under Sections 341, 294(b), 323, 324 and 506(ii) IPC. Thereafter, the first respondent police initiated action against the petitioner under Section 122(1)(b) of Cr.P.C for the breach of bond executed under Section 110 Cr.P.C.

8. On a careful perusal of the records, it is seen that on Prisoner's Transit Warrant, the petitioner was summoned before the first respondent, however, no opportunity was provided to the petitioner to engage a counsel. It is settled proposition of law, the accused, who is in custody, has to be provided with legal assistance by engaging a counsel on his own. If the petitioner is not in a position to engage a counsel on his own, it is the bounden duty of the respondents/Court to provide legal assistance through Legal Services Authority. In this case, the first respondent ought to have offered adequate time to engage a counsel to defend him or engage a counsel through Legal Services Authority.

9. In such view, the order passed by the first respondent dated 13.01.2021 is hereby set aside and the matter is remitted back to the first respondent for fresh consideration. The first respondent is directed to issue fresh summons to the witnesses and also provide legal assistance to the petitioner through the Legal Services Authority, if the petitioner is not in a position to engage a counsel on his own and dispose of the case in accordance with law. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order. The petitioner shall co-operate with the respondents for enquiry.

10. With the above direction, this Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Executive Magistrate-cum-
Deputy Commissioner of Police,
Madhavaram, Chennai - 110.

2. The Inspector of Police,
M-3, Puzhal Police Station, Chennai - 600 066.

3. The Public Prosecutor, High Court, Madras.

4. The Superintendent, Central Prison-I, Puzhal, Chennai.

5. The Secretary,
Legal Services Authority, High Court, Madras

CrI. R.C. No.113 of 2021
and CrI.M.P.No.2241 of 2021

A.SK(16.03.2021)

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