

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.126 of 2021
and Crl.M.P.No.2459 of 2021

Jagan @ JaganNathan

... Petitioner/Accused

Vs.

1.The Executive Magistrate cum
Deputy Commissioner of Police
Triplicane Police District
Chennai -600 002

2.The Inspector of Police
F-5, Choolaimedu Police Station
Choolaimedu
Chennai-600 094

... 2nd Respondent/Complainant

PRAYER : Criminal Revision filed u/s.397 r/w.401 Cr.P.C., to call for the records and set aside the order passed by the Executive Magistrate cum Deputy Commissioner of Police, Triplicane Police District, Chennai, in M.P.No.09/2020 dated 21.10.2020 in R.C.No.129/Sec.Pro./DCP Triplicane/2020.

For Petitioner : Mr..M.Premkumar for
Mr.P.Wellington

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

सत्यमेव जयते
O R D E R

The petitioner is a history sheeter. Already several previous cases are pending against him viz., in Crime Nos.216/1996, 449/1997, 2305/1997, 199/1998, 430/1998, 607/1998, 265/1999, 2155/2000, 2175/2000, 1923/2000, 1537/2001, 2180/2001, 739/2005, 61/2008, 957/2009, 961/2009, 116/2018 and 702/2018. Further, due to continuous issues raised frequently in the jurisdiction of Choolaimedu Police Station, the petitioner was directed to give behaviour bond. Accordingly, the petitioner gave a bond u/s.110 Cr.P.C., for keeping a good behaviour. Subsequently, during the bond period, petitioner has been involved in an offence which has been registered in Crime No.683 of 2020 for the offence under sections 8(C) read with Section 20(b)(II)(B) NDPS Act. Subsequently, he has been arrested and remanded to judicial custody on 04.09.2020 and produced before the first respondent wherein P.W.2 has given evidence that petitioner has given

behaviour bond u/s.110 Cr.P.C, but violated the said bond. Thereafter, P.W.3 in his evidence stated that petitioner has been found in possession of Ganja weighing 1 kg 150 grams and so, a case has been registered in Crime No.683/2020 u/s.8(C) r/w.20(b)(ii)(B) NDPS Act and the petitioner has been produced before the 17th Metropolitan Magistrate, Saidapet and he has been remanded to judicial custody for 15 days. The said statements have been recorded u/s.313 Cr.P.C. Thereafter, the petitioner was examined and he accepted the guilt but stated no witness on his side to be examined. The 1st respondent, based on the evidence put forth and for violation of good behaviour bond, in connection with crime No.683/2020 u/s.8(c) r/w.20(b)(ii)(B) NDPS Act, passed the impugned order cancelling the bond period and ordered to undergo imprisonment for the remaining bond period. Challenging the said order, the petitioner is before this court by way of the present Revision.

2. The learned counsel for the petitioner would submit that the bond was executed only for keeping good behaviour, but it is mentioned as under Section 107 Cr.p.c., and further stated that it is for keeping peace but the petitioner failed to keep good behaviour. Further, the learned counsel stated that the petitioner was remanded and he was produced before the 1st respondent on P.T.warrant and so, when he was in the custody, no opportunity was given either to defend the case by producing competent witnesses on his side or to engage the counsel for defending his case, thereby, in violation of principles of natural justice, the impugned order has been passed. Hence, the learned counsel for the petitioner sought to set aside the order.

3. Mr.K.Madhan, learned Government Advocate (Criminal Side) would submit that Section 107 Cr.P.C., is wrongly mentioned however it is mentioned as good behaviour (e-dlaj). Therefore, mere non quoting of correct section cannot be a sole ground for setting aside the impugned order. Further, opportunity was given to the petitioner, however, he refused to avail the said opportunity and no witness was examined on his side. However, on the side of the prosecution, three witnesses were examined. After considering the statement of the prosecution witnesses, the 1st respondent passed the order cancelling the bond executed u/s.110 Cr.P.C., Therefore, there is no merit in this Criminal Revision and the same is liable to be dismissed.

4. Heard and perused the records.

5. This court perused the impugned order carefully. The learned counsel appearing on either side pointed out that section has been wrongly mentioned in the impugned order. However, it has been clearly stated in the impugned order that the petitioner has given bond for his good behaviour (e-dlaj). As pointed out by the learned Government

Advocate, mere mis-quoting of the provision of Cr.P.C., in the impugned order cannot be a sole ground to set aside the order of the 1st respondent as there is no prejudice caused to the petitioner. Further, the petitioner failed to sustain the ground raised by him with regard to quoting of wrong section in the impugned order. Regarding violation of principles of natural justice, on a perusal of the records, it is seen that the appellant was arrested on 28.09.2020 and remanded for judicial custody and produced on PT Warrant and thereafter on 13.10.2020 produced before the 1st respondent and the first respondent, without giving opportunity to the petitioner to defend the case by engaging any counsel, on his own or arranging legal aid counsel on behalf of the petitioner, the impugned order has been passed, so there is a violation of the principles of natural justice and constitutional right. Therefore, on the said ground, this court is inclined to set aside the order of the first respondent dated 21.10.2020.

6. On the above findings, the order of the 1st respondent is set aside and remanded back with a direction to the 1st respondent to give opportunity to the petitioner either to engage a counsel on his own or arrange legal aid counsel on behalf of the petitioner to defend his case and dispose of the matter, within two months from the date of receipt of a copy of this order.

7. The Criminal Revision Case is disposed of with the above direction. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Executive Magistrate cum
Deputy Commissioner of Police
Triplicane Police District
Chennai -600 002

2.The Inspector of Police,
F-5, Choolaimedu Police Station
Choolaimedu, Chennai-600 094

3.The Jail Superintendent, Branch Jail, Saidapet, Chennai-15.

4.The XIV Metropolitan Magistrate, Egmore.

5. Do thro the Chief Judicial Magistrate, Egmore, Chennai

6.The Commissioner of Police, Vepary, Chennai 7.

7. The Public Prosecutor, High Court, Madras - 104.

Cr1.R.C.No.126 of 2021

A.SK(11.03.2021)