

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.101 of 2021 and
Crl.M.P.No.1867 of 2021

Gajapathi

...Petitioner

Vs.

1.The Executive Magistrate cum
Deputy Commissioner of Police,
St.Thomas Mount, Chennai.

2.State Inspector of Police (L & O),
S-7 Madipakkam Police Station,
Keelkattalai, Chennai-117.

...Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records on the file of the, Executive Magistrate cum Deputy Commissioner of Police, St.Thomas Mount in M.P.No.37 of 2020 in Na.Ka.En.221/Neer.Se.Nadu.Kha.Dhu.Aa.Pa.Tho.Ma/2020 in S-7 Madipakkam Police Station No.42/2020 U/S.110 Cr.P.C in Na.Ka.En.221/Neer.Se.Nadu/Ka.Dhu.Aa/St., Thomas Mount District/2020 dated 31.12.2020 and set aside the order dated 31.12.2020.

For Petitioner : Mr.S.Senthilvel

For Respondent : Mr.K.Madhan
Government Advocate [Crl. Side]

ORDER

This Criminal Revision has been filed to set aside the order, dated 31.12.2020, passed by the 1st respondent in M.P.No.37 of 2020 in Na.Ka.No.221/Neer.Se.Nadu.Kha.Dhu.Aa.Pa.Tho.Ma/2020 in S-7 Madipakkam Police Station No.42/2020 under Section 110 Cr.P.C in Na.Ka.No.221/Neer.Se.Nadu/Ka.Dhu.Aa/St.ThomasMount District/2020.

2.The petitioner was executed a bond under Section 110 Cr.P.C., on 16.10.2020 for good behaviour and keeping peace for a period of two years. Subsequently, on 09.12.2020, he alleged to have involved in another case in Crime No.710 of 2020, for offence under Sections 341, 294(b), 324, 307 and 506(ii) IPC and he was arrested and remanded to judicial custody. Thereafter, the petitioner was produced before the 1st respondent on PT warrant and the 1st respondent passed order under Section 122(1) (b) of Cr.P.C on 31.12.2020 and detained the petitioner.

3.The learned counsel for the petitioner would submit that while the petitioner was in judicial custody, he was produced before the 1st respondent on PT warrant. The 1st respondent has not given any opportunity to the petitioner to engage a counsel to defend the case and he passed the order on the same day on 31.12.2020, which violates the principles of natural justice and fundamental rights of the petitioner. Therefore, the order passed by the 1st respondent is liable to be set aside.

4.The learned Government Advocate [Crl. Side] appearing on behalf of the respondents would fairly submit that no opportunity was given to the petitioner to engage a counsel and he was produced on PT warrant and subsequently, the 1st respondent passed the order under Section 122(1)(b) Cr.P.C., on 31.12.2020.

5.Heard and perused the records.

6.Admittedly, the petitioner has executed a bond under Section 110 Cr.P.C., and subsequently, he alleged to have involved in another case in Crime No.710 of 2020, for offence under Sections 341, 294(b), 324, 307 and 506(ii) IPC and he was remanded to judicial custody. Thereafter, the petitioner was produced before the 1st respondent on PT warrant and after enquiry, the 1st respondent had passed the order under Section 122(1) (b) Cr.P.C., on 31.12.2020.

7.On a perusal of the records clearly shows that the petitioner has not engaged any counsel on his own, however, the 1st respondent has also not appointed any legal aid counsel for the petitioner, which is in violation of Article 39(A) of the Constitution of India. It is settled preposition of law that the accused, who is in judicial custody, is to be given opportunity to engage a counsel on his own, failing which, the 1st respondent should arrange free legal aid counsel from the concerned District Legal Services Authority.

8.Therefore, the order dated 31.12.2020 passed by the 1st respondent is liable to be set aside and the same is, accordingly, set aside and the matter is remitted back to the 1st

respondent for fresh enquiry. The 1st respondent is directed to give opportunity to the petitioner to engage legal aid counsel and in case, the petitioner is not in a position to engage a counsel, the 1st respondent shall approach the concerned District Legal Services Authority and take steps to engage a competent counsel for free legal aid and after giving opportunity to the petitioner, dispose of the matter in accordance with law within a period of two months from the date of receipt of a copy of this order.

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

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1. The Executive Magistrate cum
Deputy Commissioner of Police,
St. Thomas Mount, Chennai.

2. State Inspector of Police (L & O),
S-7 Madipakkam Police Station,
Keelkattalai, Chennai-117.

+1cc to M/s.K.Shanmugam, Advocate, Sr.No.11158

Cr1.R.C.No.101 of 2021

SSV(CO)
KKV/16/03/2021

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