

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.149 of 2021 &
Crl.M.P.No.3214 of 2021

John Melkiyur

...Petitioner

Vs.

1.The Sub-Divisional Executive
Magistrate-cum-Revenue Divisional Officer,
Tirukoilur Revenue Division,
Kallakurichi District.

2.The State Rep. by its
Inspector of Police,
Ulundurpet Police Station,
Kallakurichi District.

..Respondents

PRAYER: Criminal Revision Case filed under 397 r/w 401 of
Cr.P.C. to set aside the order passed by the learned Sub
Divisional Executive Magistrate-cum-Revenue Divisional Officer,
Tirukoilur Division, Kallakurichi in Na.Ka.A3/3430/2020, dated
08.01.2021.

For Petitioner : Mr.C.P.Palanichamy
For Mr.T.K.S.Gandhi

For Respondents: Mrs.T.P.Savitha
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed to set aside the
order passed by the learned Sub Divisional Executive Magistrate-
cum-Revenue Divisional Officer, Tirukoilur Division,
Kallakurichi in Na.Ka.A3/3430/2020, dated 08.01.2021.

2. It is the case of the first respondent that the
petitioner executed a bond for good behaviour under Section 110
of Cr.P.C. in M.C.No.79 of 2020, on 31.08.2020 and thereafter,
the petitioner involved in two other cases viz., Crime No.1654

of 2020 was registered for the offence under Sections 341, 294 (b), 352, 506 (II) IPC r/w 109 IPC and Crime No.1663 of 2020 was registered for the offence under Section 25 (1B)(a) 27(2) Indian Arms Act. Since the petitioner had indulged in the other offences immediately to the execution of bond in M.C.No.79 of 2020, the first respondent passed the order, ordering the petitioner to be imprisoned from 17.11.2020 to 31.07.2021. Challenging the same, the accused has filed this Revision.

3. The learned counsel for the revision petitioner would submit that the first respondent has not conducted the enquiry and offered an opportunity to the petitioner to put his case. The first respondent though observed that there was no supporting materials to commit the offence in Crime No.1663 of 2020 for the offence under Section 25 (1B)(a) 27(2) Indian Arms Act, however with regard to crime No.1654 of 2020, there was sufficient materials available to commit the offence against the accused/petitioner, and however, in both the cases are still at the stage of investigation and no final report so far has been filed and therefore, referring the cases that were pending investigation for passing imprisonment order is gross violation of natural justice.

4. The learned Government Advocate (Criminal Side) for the respondents would submit that sufficient opportunity was given to the petitioner before passing the order, however, the same was not utilized by the petitioner. The first respondent, on proper appreciation of materials, sentenced the petitioner to undergo imprisonment from 17.11.2020 to 31.07.2021 under Section 122(1) of Cr.P.C. for the breach of bond executed under Section 110 of Cr.P.C., and as such, no interference is required.

5. Heard the learned counsel on either side and perused the materials placed on record.

6. Admittedly, the petitioner executed a bond for good behaviour under Section 110 of Cr.P.C. in M.C.No.79 of 2020, on 31.08.2020. During the pendency of the said bail bond, the petitioner was involved in another case in Crime No.1654 of 2020 for the offence under Sections 341, 294 (b), 352, 506 (II) IPC r/w 109 IPC . Further a case in Crime No.1663 of 2020 was registered for the offence against the petitioner under Section 25 (1B)(a) 27(2) Indian Arms Act, and the petitioner was arrested and remanded to judicial custody. When the petitioner was in judicial custody, the first respondent police initiated action against the petitioner under Section 122(1)(b) Cr.P.C and he was produced before the second respondent on 08.12.2020. After due enquiry, the second respondent on 08.01.2021 passed the final order.

7. The main contention of the learned counsel for the petitioner is that though the petitioner was permitted to engage the counsel to defend his case, no relevant records have been produced to the petitioner, as sought for by him, to defend his case. A perusal of the order, it could be seen that P.T. warrant was issued on 08.12.2020 and on that day, the petitioner appeared along with a counsel and at the request of the learned counsel, the matter was adjourned to 15.12.2020. And on 15.12.2020, the petitioner again requested time as, he has not received any document and sought time to file a reply. As per the request of the learned counsel on 28.12.2020, the matter was taken up for final hearing, however passed the final order on 08.01.2021, without furnishing the relevant documents as sought for by the petitioner. No doubt, granting of opportunity before cancellation of bond and if it is not done, it would amount to violation of natural justice, thereby, the duty is cast upon the Court to cancel the order. However, on a bare perusal of records, all the proceedings were completed on 28.12.2020 but no records to show that the relevant documents as sought for by the petitioner has been produced and sufficient opportunities had been given to the petitioner/accused to defend the case and it is also to be noted that when the petitioner is in judicial custody. There is no clear materials to show that all the formalities have been followed and opportunity has been given.

8. Under these circumstances, this Court finds that the relevant documents as sought for by the petitioner has not been furnished and no sufficient opportunity was given to the petitioner to defend his case. Therefore, the order passed by the first respondent dated 08.01.2021 is set aside and the matter is remitted back to the first respondent to dispose of the case in accordance with law, within a period of two months from the date of receipt of a copy of this order.

9. Accordingly, this Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

r n s

To

1.The Sub Divisional Executive Magistrate-cum-
Revenue Divisional Officer, Tirukoilur Division,
Kallakurichi.

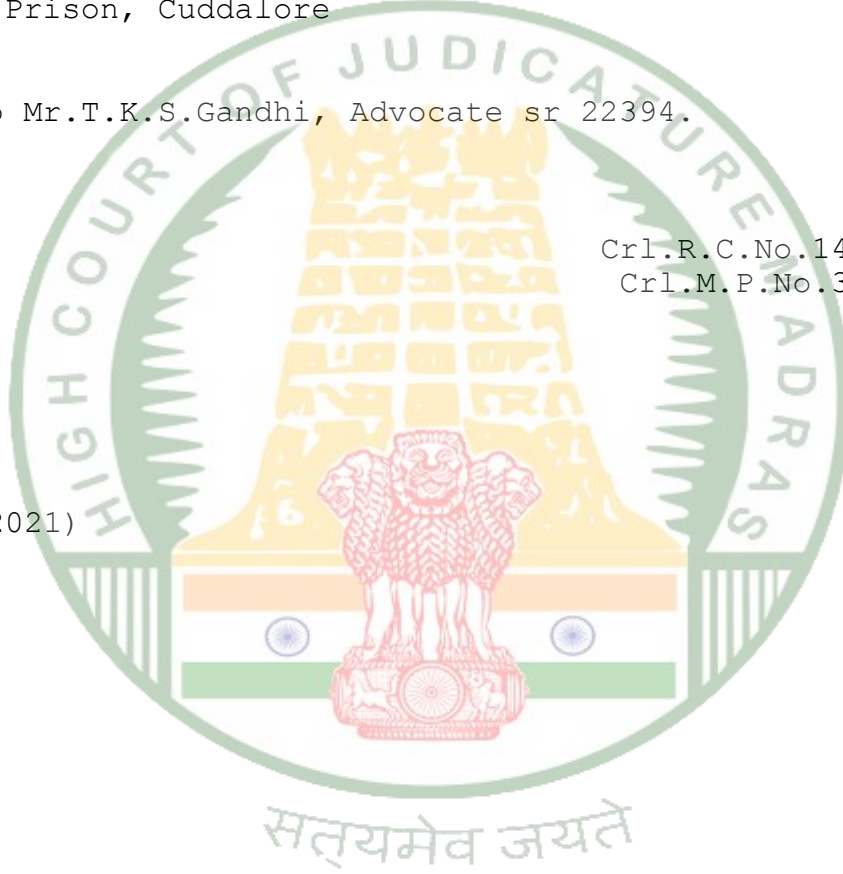
2.The Inspector of Police,
Ulundurpet Police Station,
Kallakurichi District.

3.The Superintendent of Police
Central Prison, Cuddalore

+1 CC to Mr.T.K.S.Gandhi, Advocate sr 22394.

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AD(CO)
SP(26/04/2021)



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