

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.164 of 2021
and CrI.M.P.No.3409 of 2021

Settu @ Manikandan ... Petitioner

..vs..

- 1.The Executive Magistrate-cum-
Deputy Commissioner of Police,
Triplicane, Chennai.
- 2.State rep by
The Inspector of Police,
F-5, Choolaimedu Police Station,
Chennai - 94. ... Respondents

Criminal Revision Case filed under Section 397 r/w
401 Cr.P.C, to set aside the order in Misc.Petition
No.1 of 2021 in R.C.No.86/Sec.Pro/ DCP Triplicane/2020
vide an order dated 08.02.2021 on the file of the 1st
respondent and to allow the above Criminal Revision Case.

For Petitioner : Mr.S.N.Arunkumar
For Respondents: Mr.T.P.Savitha
Government Advocate (CrI.Side)

O R D E R

This Criminal Revision Case has been filed against
the order dated 08.02.2021 passed by the first respondent
in M.P.No.1 of 2021 in R.C.No.86/Sec.Pro/ DCP
Triplicane/2020.

2.The case of the petitioner is that the second
respondent police arrested the petitioner in S.No.29 of
2020 under Section 107 Cr.P.C and initiated proceedings
vide R.C.No.86/Sec.Pro./DCP Triplicane/2020 as he was
involved in the following cases :

i) Crime No.398 of 2014 for the offence under Sections 120B, 109, 302, 397 and 201 IPC on the file of the Mailam Police Station;

ii) Crime No.97 of 2015 for the offence under Sections 341, 294(b), 326, 324 and 506(ii) IPC on the file of the Choolaimedu Police Station ;

iii) Crime No.1769 of 2015 for the offence under Sections 341, 294(b), 392 and 506(ii) IPC on the file of the Choolaimedu Police Station;

iv) Crime No.1091 of 2017 for the offence under Sections 147, 148, 341, 294(b), 452 and 324 IPC on the file of the K-8 Police Station ;

v) Crime No.129 of 2017 for the offence under Section 147, 148, 341, 294(b), 452, 384 and 506(ii) IPC on the file of the K-3 Police Station ;

vi) Crime No.2386 of 2017 for the offence under Sections 294(b), 506(i) IPC r/w Section 4 of TNPPDL Act on the file of the Choolaimedu Police Station;

vii) Crime No.103 of 2020 for the offence under Section 4(1)(a) of TNP Act on the file of the Choolaimedu Police Station; and

viii) Crime No.523 of 2020 for the offence under Section 4(1)(a) of TNP Act on the file of the Choolaimedu Police Station.

As per the proceedings, the petitioner appeared before the second respondent and executed a bond under Section 107 Cr.P.C for keeping good behaviour. During the said bond period, the petitioner violated the said proceedings and involved in another case in Crime No.20 of 2021 for the alleged offence under Sections 341, 294 (b), 324, 307 and 506(ii) IPC and he was arrested and remanded to judicial custody on 18.01.2021. Thereafter, the second respondent police initiated action against the petitioner under Section 122(1)(b) Cr.P.C for the breach of bond executed by the petitioner under Section 107 Cr.P.C within 167 days. On Prisoner's Transit Warrant, the petitioner was summoned before the first respondent on 01.02.2021. After due enquiry, the first respondent by order dated 08.02.2021 convicted and sentenced the petitioner under Section 122(1) Cr.P.C. to undergo imprisonment for the remaining period covered in the bond. Challenging the said order, the petitioner is before this Court.

3.The learned counsel for the petitioner would submit that while the petitioner was in judicial custody, the first respondent without providing sufficient

opportunity and legal assistance to the petitioner to defend his case passed the order, which violates the principles of natural justice. Therefore, the order passed by the first respondent is liable to be set aside.

4.The learned Government Advocate (Crl.Side) would submit that after providing sufficient opportunity only the petitioner was produced before the first respondent for enquiry. At the time of enquiry, the petitioner had 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 dismissed.

5.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

6. Admittedly, the petitioner was involved in several cases and he was arrested and remanded to judicial custody. Thereafter, a bail bond was executed by the petitioner under Section 107 Cr.P.C for keeping good behaviour. During the pendency of the said bail bond, the petitioner was alleged to have involved in another case in Crime No.20 of 2021 for the offence punishable under Section 341, 294(b), 324, 307 and 506(ii) IPC and hence, he was arrested and remanded to judicial custody on 18.01.2021. When the petitioner was in judicial custody, the second respondent police initiated action against the petitioner under Section 122(1)(b) Cr.P.C and he was produced before the first respondent on 01.02.2021. After due enquiry, the first respondent on 08.02.2021 passed the final order and directed the petitioner to undergo imprisonment for the remaining period as per the bond.

7.On a careful perusal of the records, it is seen that legal assistance has not been provided to the petitioner/accused, which is one of the rights of the accused. The first respondent before proceeding with the case, he should have ensured that the petitioner engaged a counsel or he is willing to engage a counsel. 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 Court/respondent police to provide legal assistance through Legal Services Authority. In this case, the first respondent ought to

have offered adequate time to the petitioner to engage a counsel and to defend his case or should have engaged a counsel through Legal Services Authority. Admittedly, on the date of examination of the witnesses, the accused was in custody and he was produced before the first respondent on Prisoner's Transit Warrant. Therefore, the first respondent should have provided legal assistance to the petitioner through the legal services authority to defend his case.

8. Under these circumstances, this Court finds that no sufficient opportunity was given to the petitioner to defend his case. Therefore, the order passed by the first respondent dated 08.02.2021 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. The first respondent is also directed to 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.

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

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Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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

2. The Inspector of Police,
F-5, Choolaimedu Police Station,
Chennai - 94.

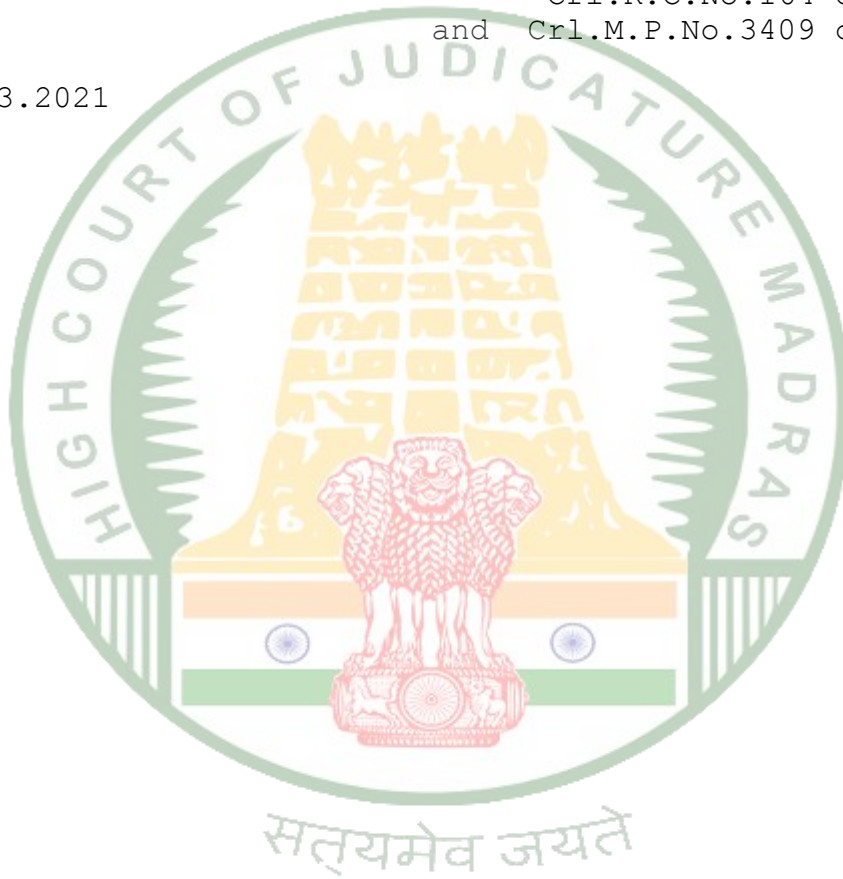
3.The Superintendent,
Central Prison,
Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

Copy to: The Secretary, Legal Services Authority,
High Court, Chennai.

Crl.R.C.No.164 of 2021
and Crl.M.P.No.3409 of 2021

GP(CO)
EU 19.03.2021



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