

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.424 of 2021 &
Crl.M.P.No.6860 of 2021

Balasubramaniam

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Petitioner

Vs.

1.The Sub Divisional Magistrate-cum-
Sub-Collector,
Dharapuram.

2.State Rep. by
The Inspector of Police,
Prohibition Enforcement Wing,
Dharapuram,
Tiruppur District.

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Respondents

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the order dated 15.03.2021 passed in M.C.No.33/2021/E, on the file of the first respondent/Sub Divisional Magistrate-cum-Sub-Collector, Dharapuram.

For Petitioner : Mr.K.Govi Ganesan
For Respondents : Mr.S.Sugendran
Government Advocate (Criminal Side)

ORDER

This Criminal Revision Case has been filed to set aside the order passed by the first respondent, vide proceeding dated 15.03.2021 in M.C.No.33/2021/E, under Section 122 (1) (b) r/w 111 of Cr.P.C..

2. It is the case of the second respondent that the petitioner executed a bond for good behaviour under Section 110 of Cr.P.C. on 23.02.2021 and thereafter, the petitioner involved in other case in Crime No.419 of 2021 for the offence under Sections 4(1)(a), 4(1)(b), 4(1)(g), 4(1-A) of Tamil Nadu Prohibition Act. When the petitioner was in judicial custody, a summon was issued on 06.03.2021 for explanation and he was produced before the first respondent on 13.03.2021 on P.T.warrant and the first respondent passed the impugned order, taking note of the fact that the petitioner pleaded himself guilty, and passed the detention order dated 15.03.2021, detaining the petitioner till the expiry of the period of bond by invoking Section 122 (1)(b) of Cr.P.C.

3. Though the learned counsel for the petitioner, in the grounds of the Revision has taken a stand that the first respondent has no power to invoke Sub Clause (1)(b) of Section 122 of Cr.P.C., during the course of argument, he submitted that he will not argue on the said point, however, he would restrict his argument only on the ground that the petitioner/accused was not given opportunity to put-forth his defence before the first respondent. 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 (Criminal Side) for the respondents would submit that before passing the impugned order dated 15.03.2021, an opportunity was given to the petitioner and the petitioner himself pleaded guilty for the commission of offence and therefore, he cannot now challenge the said order. The first respondent, on proper appreciation of materials, sentenced the petitioner to undergo imprisonment till the expiry of the bond period by invoking Section 122(1)(b) 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. on 23.02.2021. During the pendency of the said bail bond, the petitioner was involved other case in Crime No.419 of 2021 for the offence under Sections 4(1)(a), 4(1)(b), 4(1)(g), 4(1-A) of Tamil Nadu Prohibition Act. 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 13.03.2021 on P.T.warrant and as per the proceedings of the first respondent, it could be seen that the petitioner pleaded himself guilty, but the fact remains that the petitioner was not given any legal assistance and this Court also, time and again, gave directions to the Executive Magistrates, while initiating proceedings under Section 122(1)(b) of Cr.P.C., if accused in custody, an opportunity shall be given to the accused for engaging a counsel on his own or, if the accused is not in a position to engage the counsel, the concerned Executive Magistrates shall take steps to provide legal assistance through Legal Services Authority.

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.

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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 15.03.2021 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. The petitioner is set at liberty on his own bond, if his presence is not required for any other cases. The petitioner is directed to cooperate for the enquiry.

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

सत्यमेव जयते

15.07.2021

Speaking Order / Non-speaking order

Index : Yes / No.
Internet : Yes.

Note: Issue order copy today
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To

- 1.The Sub Divisional Magistrate-cum-Sub-Collector,
Dharapuram.
- 2.The Inspector of Police,
Prohibition Enforcement Wing,
Dharapuram,
Tiruppur District.
- 3.The Central Prison, Puzhal,
Coimbatore.
- 4.The Government Advocate (Criminal Side)
Madras High Court, Chennai.



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P.VELMURUGAN, J.

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