



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.235 of 2021

Siva @ Speed Siva

... Petitioner

Vs.

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

2. State : Inspector of Police,
Law and Order,
S-16 Police Station,
Perumbakkam,
Chennai - 600100.

...Respondent

PRAYER : Criminal Revision is filed under Sections 397 and 401 of Criminal Procedure Code, to set aside and revise the order dated 12.04.2021 passed by the 1st respondent in நா.கா.எண்.83/நிர். செ. நடு. கா. து. ஆ. ப. தோ. ம/2021 on the file of the Executive Magistrate cum Deputy Commissioner of Police, St.Thomas Mount.

For Petitioner : Mr.S.Vellidoss

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed to set aside and revise the order dated 12.04.2021 passed by the 1st respondent in நா.கா.எண்.83/நிர். செ. நடு. கா. து. ஆ. ப. தோ. ம/2021 on the file of the Executive Magistrate cum Deputy Commissioner of Police, St.Thomas Mount.

2. The first respondent passed the impugned order dated 12.04.2021 under Section 122(1)(b) of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short), stating that there was a case against the petitioner. The Petitioner had



already executed a bond under Section 110 of Cr.P.C. During the pendency of the bond period, the petitioner had allegedly committed another offence in Crime No.208 of 2021 for the offence under Sections 294(b), 341, 324, 307, 506(ii) of IPC and he was summoned by the second respondent/police and produced before the first respondent. After completing the enquiry, the first respondent has passed the impugned order dated 12.04.2021. Challenging the said order, the petitioner is now before this Court.

3. Learned counsel for the petitioner would submit that the petitioner was arrested and he was in custody of the second respondent/police in Crime No.208 of 2021. The petitioner was produced before the first respondent on 12.04.2021 and the order was passed on the same day without giving any opportunity or legal assistance to the petitioner and therefore, the order passed by the first respondent is liable to be set aside.

4. Learned Government Advocate (crl.side) would submit that the accused was produced before the first respondent on 12.04.2021 and he has made a petition through Advocate Mr.Purushothaman, who appeared for him and he has not cross examined the witnesses and the petitioner himself admitted that he has committed offence. Therefore, the order was passed. Therefore, the opportunity was given and found that the case registered against the petitioner in Crime No.208 of 2016 is genuine. Therefore, the bond executed by the petitioner was cancelled and he was imposed with a sentence of 351 days. There is no merit in the criminal revision and liable to be dismissed.

5. Heard both sides and perused the materials available on record.

6. Admittedly, there was a case against the petitioner in Crime No.543 of 2019 under Sections 341, 294(b), 323, 384 and 506(ii) of IPC and during that period, the petitioner was asked to execute a bond under Section 110 of Cr.P.C and according to the prosecution, during the pendency of bond period, the petitioner was alleged to have committed another offence in Crime No.208 of 2021 offence under Sections 294(b), 341, 324, 307, 506(ii) of IPC. Since the petitioner is involved in another case during the pendency of the bond period, he was produced before the respondent on 12.04.2021 and an order under Section 122 of Cr.P.C was passed on the same day.

7. The fact remains that when he was in custody in Crime No.208 of 2021, the petitioner was produced before the respondent on 12.04.2021. On that day, 3 witnesses were examined and they were not cross examined. Since the petitioner admitted the crime, the impugned order was passed on the same day. However, the records shows that the respondent has not provided



legal assistance to the petitioner.

8. This Court time and again has given the directions that before passing the order under Section 122 of Cr.P.C., legal assistance has to be extended to the accused who is in custody. Since the accused is in custody, during the custody period, legal assistance has to be extended. If the opportunity is given, the accused would have engaged advocate on its own and the proceedings would be proceeded with legal assistance. If the accused failed to engage the counsel on its own, the respondent/authority has to engage the counsel from Legal Services Authority and after extending the legal assistance, they have to proceed to pass a final order. But time and again, the respondent/authority in various districts have committed the very same mistakes which shows that they do not provide any legal assistance to the accused in custody, which violates the constitutional rights as well as the rights of the accused. The State is not ready to follow the guidelines given by this Court, they are not giving suitable instructions to the authorities.

9. This Court finds that there is a gross negligence on the part of the State as well as the respondents. Therefore, the order passed by the first respondent is set aside.

10. Accordingly, the criminal revision case is allowed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Alandur.
2. The Executive Magistrate Cum
Deputy Commissioner of Police,
St. Thomas Mount,
Chennai City Police.



3. The Inspector of Police,
Law and Order,
S-16 Police Station,
Perumbakkam,
Chennai - 600100.

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4. The Superintendent,
Central Prison-1, Puzhal.

5. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.235 of 2021

GSM(CO)
SU(23/07/2021)