

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.05.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.R.C.No.307 of 2021
and
Crl.M.P.No.5833 of 2021

Murugavel

...Petitioner/Accused

-Vs-

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

2.The Inspector of Police,
J-11, Kannagi Nagar Police Station,
Chennai - 97.

3.The Superintendent,
Puzhal - 1,
Chennai.

...Respondents/Respondents

Criminal Revision Petition filed under Sections 397 & 401 of Cr.P.C., seeking to set aside the impugned order passed by the first respondent dated 19.04.2021, by his proceedings in M.P.No.3 of 2021 on the file of the Executive Magistrate-cum-Deputy Commissioner of Police, Adayar District, Chennai in Na.Ka.No.15/Sa.Nadu.Ka.Thu.Aa/Adayar District/2021 in J-11, Kannagi Nagar Police Station/S/P.110 Ku.Vi.Mu.Sa. Pathvedu V.No.-13/2021 U/s.122(1-b) Cr.P.C for the period of 340 days, ordering to detain the petitioner for violation of the bond executed by the detinue for one year, to the value of Rs.10,000/- with 2 sureties on 26-02-2021.

For Petitioner : Mr.B.Gopalakrishnan

For Respondents: Mr.Charles Premkumar
Government Advocate (Crl.Side)

ORDER

This criminal revision case has been filed to set aside the order passed by the first respondent dated 19.04.2021 by his proceedings in M.P.No.3 of 2021 on the file of the Executive Magistrate-cum-Deputy Commissioner of Police, Adayar District, Chennai for detention of the petitioner.

2.The case of the prosecution is that petitioner was involved in several offences and he is a history sheeter. Proceeding was taken under section 110 Cr.P.C and he executed a bond on 26.02.2021 that he would keep good conduct for one year and in default he would undergo simple imprisonment for one year or pay a fine of Rs.10,000/- During the currency of this bond, he committed an offence punishable u/s 341,294(b),324,427,506 (ii) IPC along with other accused. Therefore, a case in crime number 136/2021 came to be registered against the petitioner. Since he violated the bond conditions imposed u/s 110 Cr.P.C, he was sentenced to undergo imprisonment for 340 days u/s 122(1-b)

3.The learned counsel appearing for the petitioner submitted the case in crime number 136/2021 is false case, and the petitioner is implicated in this case falsely only to detain him in the prison. No proper procedure was followed either before directing the petitioner to execute the bond and during the enquiry which culminated to his detention. No proper opportunity was given to him for legal aid and the enquiry was one sided. The first respondent has no jurisdiction to pass such an order.

4.The Learned Government Advocate (Criminal Side) strongly opposes this petition on the ground that the petitioner is a history sheeter and several cases are pending against him. When the bond executed by him was in force, he has again committed an offence. The impugned order was passed after following the necessary procedures. Therefore, he seeks the dismissal of this petition.

5.Heard the Learned counsel for the petitioner and the learned Government Advocate (Criminal Side).

6.This Court has considered this issue in CrI.R.C.No.78 of 2020 in the case of Devi Vs. The Executive Magistrate-cum-Deputy Commissioner of Police and another, wherein a similar was passed, detaining the petitioner for violating the bond condition. This order considered the aspects relating to giving security for keeping the peace and for good behaviour covered under chapter VIII of Criminal Procedure Code. Tracing its history from Madras Regulations,1802,The Code of Criminal Procedure,1861,1898 code,1973 code, the 2005 amendment in the

code and the District Police Act, 1859, later known as Tamil Nadu District Police Act 1969, Madras City Police Act, 1888 and the precedents touching upon the subject with regard to the powers of the Executive Magistrate-cum-Deputy Commissioner of Police to order detention under Section 122(1)(b) of Cr.P.C., for violating the condition imposed in the bond, the court set aside the impugned order for the reasons that,

1. No legal aid was provided to the petitioner.
2. When the proceedings under sections 107 to 110 Cr.P.C are judicial in nature, the bar under the proviso to section 6 of the District Police Act, 1859 follows suit, thereby disentitling the khaki personnel from exercising judicial functions,
3. A bond for good behaviour was never envisaged to fall within the net of section 122(1)(b) Cr.P.C,
4. G.O.Ms.No.659 and G.O.Ms.No.181 limit the powers exercisable by Deputy Commissioners of Police to sections 108 to 110 and do not clothe them with the powers under section 122 Cr.P.C.
5. There is no material to show that an inquiry under section 116 Cr.P.C was conducted by the DCP-cum-EM before passing an order under section 117 Cr.P.C.

7. Finally it was concluded that the Executive Magistrate-cum-Deputy Commissioner of Police has no authority to pass orders, detaining a person for non-observance of conditions incorporated in the bond. A question was also framed and the matter was ordered to be placed before the Hon'ble Chief Justice requesting to constitute a Bench of appropriate strength for an authoritative pronouncement, which reads as follows:-

Whether G.O.Ms.No.659, Home (Cts.VIA) Department dated 12.09.2013 and G.O.Ms.No.181, Home (Cts.VIA) Department dated 20.02.2014 violate the scheme of separation of powers and are ultra vires the proviso to Section 6 of the Tamil Nadu District Police Act, 1859 (Central Act XXIV of 1859)?

8. This Court is in respectful agreement with the order passed by this Court Crl.R.C.No.78 of 2020 in the case of Devi Vs. The Executive Magistrate-cum-Deputy Commissioner of Police and another. We have the identical facts and circumstances in this case. The proceedings under sections 107 to 110 Cr.P.C are judicial in nature, the bar under the proviso to section 6 of the District Police Act, 1859 disentitles the khaki personnel from exercising judicial functions. A bond for good behaviour was never envisaged to fall within the scope of section 122(1)(b) Cr.P.C. G.O.Ms.No.659 and G.O.Ms.No.181 limit the powers exercisable by Deputy Commissioners of Police to sections 108 to 110 and do not clothe them with the powers

under section 122 Cr.P.C. Therefore, following the order in Cr1.R.C.No.78 of 2020 in the case of Devi Vs. The Executive Magistrate-cum-Deputy Commissioner of Police and another, this court sets aside the order passed by the first respondent dated 19.04.2021 in Na.Ka.No.15/Sa.Nadu.Ka.Thu.Aa/Adayar District/2021 in J-11, Kannagi Nagar Police Station/S/P.110 Ku.Vi.Mu.Sa. Pathvedu V.No.-13/2021 U/s.122(1-b) Cr.P.C and directs the release of the petitioner from custody, if he is not required in any other case.

9.This criminal revision case is allowed, accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(VO)

//True Copy//

Sub Assistant Registrar

hvk/kkn
To:-

- 1.The Executive Magistrate-cum-
Deputy Commissioner of Police,
Adayar District,
Chennai.
- 2.The Inspector of Police,
J-11, Kannagi Nagar Police Station,
Chennai - 97.
- 3.The Superintendent,
Puzhal - 1,
Chennai.
- 4.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.B.Gopalakrishnan, Advocate, S.R.No.27229

Cr1.R.C.No.307 of 2021
and
Cr1.M.P.No.5833 of 2021

VG II(CO)
CB(21/05/2021)