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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.394 of 2021 &
Crl.M.P.No.6331 of 2021

A.Varathu @ Varatharaj

... Petitioner

Vs.

1. The Revenue Divisional Officer /
Sub-Divisional Executive Magistrate,
CSI Institutions Campus,
Chidambaram Colony,
Erode-638 001.

2. State By,
Inspector of Police,
Erode South Police Station, Erode.

... Respondents

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to call for the records relating to the order dated 19.02.2021 passed in MOO.MU.859/2021/A2, on the file of the Revenue Divisional Officer / Sub-Divisional Executive Magistrate, Erode against the detainee Thiru Varathu (alias) Varatharaj, S/o.Ammavasi, aged 53 years and to set aside the same.

For Petitioner : Mr.M.Deivanandam

For Respondents : Mr.S.Sugendran
Government Advocate (Criminal Side)

O R D E R

This Criminal Revision Case has been filed to set aside the order passed by the first respondent, vide proceeding dated 19.02.2021 in MOO.MU.859/2021/A2, under Section 122 (1) (b) r/w 110 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 09.10.2020 and thereafter, the petitioner involved in other case in Crime No.105 of 2021 for the offence under Sections 454 & 380 of IPC. Since the petitioner had indulged in the other offences immediately to the execution of bond on 09.10.2020, the first respondent passed the detention order on 19.02.2021, detaining the petitioner till the expiry of the period of bond viz., 08.10.2021, by invoking Section 122 (1) (b) of Cr.P.C. Challenging the same, the accused has filed this Revision.

3. The learned counsel for the petitioner would submit that it is stated in the order passed by the first respondent, the detinue has executed a bond for a period of six months and thereafter, committed offence under Sections 454 and 380 of IPC in Crime No.105 of 2021, and however, the petitioner was ordered to undergo imprisonment for a period of one year and this discrepancies would establish the non-application of mind on the part of the trial Court, while passing the impugned order. 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 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 till the expiry of the bond period viz., 08.10.2021 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 09.10.2020. During the pendency of the said bail bond, the petitioner was involved other case, and hence, a case in Crime No.105 of 2021 was



registered against the petitioner on 13.02.2021, for the offences under Sections 454 and 380 of IPC. It is to be noted that the detune had executed a bond for a period of six months only on 09.10.2020, however, in the impugned order passed by the first respondent, in paragraph No.4, it has been stated that the detainee shall undergo imprisonment for a period of one year and it shows non-application of mind on the part of the Court below, while passing the order.

7. It is also to be noted that 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 19.02.2021 and on the same day, the first respondent passed the final order, directing the petitioner to undergo imprisonment for the remaining period as per the bond.

8. 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 whether the petitioner has 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. Therefore, the first respondent should have provided legal assistance to the petitioner through the legal services authority to defend his case.

9. 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 19.02.2021 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. 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.



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

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Revenue Divisional Officer /
Sub-Divisional Executive Magistrate,
CSI Institutions Campus,
Chidambaram, Colony,
Erode-638 001.
2. The Inspector of Police,
Erode South Police Station, Erode.
3. The Superintendent of Prison,
Central Prison,
Tirupur
4. The Assistant Commissioner of Police (For Information)
Erode
5. The Government Advocate (Criminal Side)
Madras High Court, Chennai.

+1CC to M/s.Deivanandam, Advocate, Sr.No.29621/21

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RLD (CO)
K.RK. (29.07.2021)