

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRIMINAL REVISION CASE NO.377 OF 2021

AND

CRL.M.P.NO.6224 OF 2021

Madankumar @ Vellai Madan

... Petitioner

...vs...

1. The Executive Magistrate
and Deputy Commissioner of Police,
Wannarapet District.

... 1st Respondent

2. The Inspector of Police,
H.8, Thiruvotriyur Police Station,
Chennai.

... 2nd Respondent/
Complainant

Criminal Revision Case filed under Section 397 (1) and 401 Cr.P.C, to call for the entire records in connection with M.P.No.20 of 2021 in LIR.No.01/Sec.Pro/DCP WPT/2020 on the file of the Executive Magistrate and Deputy Commissioner of Police, Wannarapet District and set aside the order passed by the Executive Magistrate and Deputy Commissioner of Police, Wannarapet District dated 02.06.2021 in M.P.No.20 of 2021 in LIR.No.01/Sec.Pro/DCP WPT/2020 in H8 Thiruvottiyur Police Station, Sl.No.33/2020 u/s 110 of Cr.P.C.

For Petitioner : Mr.V.Parthiban

For Respondents : Mr.S.Sugendran
Government Advocate (Crl.Side)
for R1

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O R D E R

This Criminal Revision Case has been filed against the order dated 02.06.2021 passed in M.P.No.20 of 2021 in LIR.No.01/Sec.Pro/DCP WPT/2020 on the file of the Executive Magistrate and the Deputy Commissioner of Police, Wannarapet District.

2. According to the petitioner, the second respondent/police registered a case against the petitioner under Section 110 Cr.P.C. On receipt of the summons, the petitioner appeared before the first respondent and executed a bond under Section 110 Cr.P.C. During the said bond period, the second respondent police registered another case against the petitioner, by stating that the petitioner violated the earlier proceedings and involved in another case in Crime No.114 of 2021 for the offence under Sections 294(b), 341, 383 and 506(ii) IPC and he was arrested and remanded to judicial custody. While, the petitioner was in custody, on Prisoner's Transit Warrant, he was produced before the first respondent. After enquiry, on 19.03.2021, the first respondent without giving opportunity to the petitioner initiated proceedings under Section 122 (1) (b) Cr.P.C and also cancelled the bail bond executed under Section 110 Cr.P.C and directed the petitioner to undergo imprisonment for the remaining bond period. Subsequently, the first respondent suo motu re-opened his own order and conducted fresh enquiry and passed an impugned order on 02.06.2021. Challenging the said impugned order, the petitioner is before this Court.

3. Mr. V. Parthiban, the learned counsel for the petitioner would submit that the first respondent/Executive Magistrate has no power to re-open and review his own order. He would further submit that the first respondent even though conducted the enquiry failed to appreciate the evidence elicited during the cross examination in favour of the petitioner and passed the impugned order. Hence, both the impugned orders passed by the first respondent are liable to be set aside.

4. The learned Government Advocate (Crl.Side) would submit that the petitioner has also been involved in other cases and sufficient opportunity was given to the petitioner to defend his case. In order to comply with the direction given by this Court, the first respondent re-opened the earlier proceedings and passed the impugned order and there is no merit in this Criminal Revision Case and the same is liable to be dismissed.

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

6. Admittedly, the first respondent initiated proceedings under Section 122(1) (b) Cr.P.C and passed an order on 19.03.2021. Subsequently, the first respondent re-opened his own proceedings in M.P.No.20 of 2021 and passed impugned order on 02.06.2021. On a careful perusal of the order dated 19.03.2021, it reveals that while the petitioner was in custody, on Prisoner's Transit Warrant, he was produced before the first respondent and without providing sufficient opportunity to the

petitioner to engage a counsel to defend his case, passed the order on 19.03.2021. Subsequently, the first respondent suo motu recalled the said order and sufficient opportunity was given to the petitioner to engage a counsel to defend his case and proceedings under Section 122(1)(b) Cr.P.C has been initiated and the impugned order has been passed on 02.06.2021.

7. The learned counsel for the petitioner pointed out that even on merits, when the complaint was recalled and during the cross examination, the de facto complainant stoutly deposed that he has not preferred any complaint against the petitioner. However, the Executive Magistrate without considering the evidence of the de facto complainant passed the impugned order. Once final order was passed, the Executive Magistrate does not have any power to re-open and review his own order and no such power has given under the Criminal Procedure Code.

8. Under these circumstances, the impugned order dated 02.06.2021 passed by the Executive Magistrate is liable to be set aside. Accordingly, it is set aside and the Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

9. The Superintendent of Police, Central Prison, Puzhal, Chennai is directed to release the petitioner, if he is not required in any other case.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Executive Magistrate
and Deputy Commissioner of Police,
Wannarapet District.
2. The Inspector of Police,
H.8, Thiruvotriyur Police Station,
Chennai.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras.

Criminal Revision Case No.377 of 2021
and Crl.M.P.No.6224 of 2021

VBM(CO)
CS/23/06/2021



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