

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.381 of 2021 and  
Crl.M.P.No.6253 of 2021

Nagaraj @ M.C.Nagaraj

...Petitioner/1<sup>st</sup> Respondent

-Vs-

1. The Executive Magistrate,  
And Deputy Commissioner of Police,  
Wannarpet District. ....1<sup>st</sup> Respondent

2. The Inspector of Police,  
H8, Thiruvotriyur Police Station,  
Chennai. ....2<sup>nd</sup> Respondent/Complainant

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to call for entire records in connection with M.P.No.4 of 2021 in LIR.No.38/Sec.Pro/DCP WPT/2020 on the file of the Executive Magistrate and Deputy Commissioner of Police, Wannarpet District and set aside the order dated 02.06.2021 in M.P.No.04 of 2021 in LIR.No.38/Sec.Pro/DCP WPT/2020 in H8 Thiruvottiyur Police Station Sl.No.70/2020 U/s 110 of Cr.P.C.

For Petitioner : Mr.V.Parthiban

Respondents : Mr.S.Sugendran,  
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed against the order dated 02.06.2021 passed in M.P.No.04 of 2021 in LIR.No.38/Sec.Pro/DCP WPT/2020 on the file of the Executive Magistrate and the Deputy Commissioner of Police, Wannarpet 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.3764 of 2020 for the offence under Sections 147, 148, 294(b), 341, 427, 307 and 506(ii) IPC and he was arrested and remanded to judicial custody. After enquiry, on 08.01.2021, 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, 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 08.01.2021. Subsequently, the first respondent re-opened his own proceedings in M.P.No.04 of 2021 and passed impugned order on 02.06.2021. On a careful perusal of the order dated 08.01.2021, 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 08.01.2021. 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

//True copy//

Sub Assistant Registrar

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To

1. The Executive Magistrate,  
And Deputy Commissioner of Police,  
Wannarpet District.
2. The Inspector of Police, H8, Thiruvotriyur Police  
Station,  
Chennai.
3. The Superintendent, Central Prison, Puzhal, Chennai.
4. The Public Prosecutor, High Court of Madras.

+1cc to Mr.V.Parthiban, Advocate SR.No.30702

CrI.R.C.No.381 of 2021 and  
CrI.M.P.No.6253 of 2021

CA (CO)  
GMY (05/07/2021)