IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.408 of 2021 &
Crl.M.P.No.6541 of 2021

Marimuthu @ Chinnappa
S/o.Somu ... Petitioner

Vs.

1.The Sub Divisional Magistrate-
cum-Sub Collector,
Chidambaram,
Cuddalore District.

2.The Station House Officer,
Kattumannarkoil Police Station,
Chidambaram,
Cuddalore District. ... Respondents

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the order passed in M.C.No.82 of 2021, dated 26.04.2021, order passed by the Sub Divisional Magistrate-cum-Sub Collector, Chidambaram, Cuddalore District.

For Petitioner : Mr.D.Padmanabhan

For Respondent : 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 proceedings dated 26.04.2021 in M.C.No.82 of 2021.

2. It is the case of the second respondent that the petitioner executed a bond on 16.03.2021 for keeping good behaviour for a period of two years, under Section 110 of Cr.P.C., as he was already involved in Crime Nos.103 of 2008 under Sections 341, 294, 324, 307 of IPC r/w 3 (2)(v) SC/ST Act and in Crime No.72 of 2001 under Section 448, 294, 353, 506 (II)

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IPC. Thereafter, the petitioner involved in other case in Crime No.115 of 2021, for the offence under Sections 448, 294(b), 324, 506 (ii) & 307 of IPC. Since the petitioner had indulged in the other offences immediately to the execution of bond, the first respondent passed the detention order on 26.04.2021, detaining the petitioner for a period till the expiry of the bond period, by invoking Section 122 (1)(b) of Cr.P.C. Challenging the same, the accused has filed this Revision.

3. The learned counsel counsel for the petitioner would submit that the petitioner was arrested on 31.03.2021 by the second respondent in connection with Crime No.115 of 2021 and the petitioner was produced before the first respondent on 15.04.2021 and the petitioner was directed to appear on 20.04.2021 from jail, and on 26.04.2021, without giving an opportunity to the petitioner, straight away passed the impugned order, without giving an opportunity to the petitioner.

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 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 16.03.2021. During the pendency of the said bail bond, the petitioner was involved in other case, viz., Crime No.115 of 2021 was registered for the offence under Sections 448, 294(b), 324, 506 (ii) & 307 of IPC and hence, the petitioner was arrested and remanded to judicial custody on 31.03.2021. 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 15.04.2021 and also on 20.04.2021. After due enquiry, the first respondent on 26.04.2021 passed the final order and directed the petitioner to undergo imprisonment for the remaining period as per the bond.

7. 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 the petitioner engaged a counsel or he is

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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. Admittedly, on the date of examination of the witnesses, the accused was in custody and he was produced before the first respondent on Prisoner's Transit Warrant. Therefore, the first respondent should have provided legal assistance to the petitioner through the legal services authority to defend his case.

8. 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 26.04.2021 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.

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

Sd/-

Assistant Registrar

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Sub Assistant Registrar

r n s

To

1.The Sub Divisional Magistrate-
cum-Sub Collector,
Chidambaram,
Cuddalore District.

2.The Station House Officer,
Kattumannarkoil Police Station,
Chidambaram,
Cuddalore District.

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3.The Superintendent, Central Prison,
Cuddalore.

4.The Government Advocate (Criminal Side)
Madras High Court, Chennai.

+1cc to Mr. K.D.Padmanabhan, Advocate, S.R.No. 30543

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