



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.395 of 2021
and
CrI.M.P.No.6357 of 2021

Karthik @ Gate kartik

... Petitioner

Vs.

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

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

... Respondents

PRAYER: This Criminal Revision is filed under Section 397(1) and 401 of Criminal Procedure Code, to call for the entire records in connection with M.P.No.02 of 2021 in LIR.No.26/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.02 of 2021 in LIR.No.26/Sec.Pro/DCP WPT/2020 in H8 Thiruvottiyur P.S. Sl.No.75/2020 U/s 110 of Cr.P.C.

For Petitioner : Mr.V.Paarthiban

For Respondent : Mr.S.Sugendran
Govt. Advocate (CrI.Side)

O R D E R

The present criminal revision has been filed to call for the entire records in connection with M.P.No.02 of 2021 in LIR.No.26/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



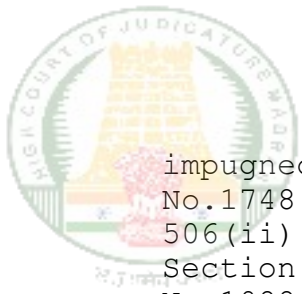
District, dated 02.06.2021 in M.P.No.02 of 2021 in LIR.No.26/Sec.Pro/DCP WPT/2020 in H8 Thiruvottiyur P.S. Sl.No.75/2020 Under Section 110 of Cr.P.C.

2. The case of the prosecution is that the petitioner is involved in the cases in Crime No.1748 of 2016 under Sections 147, 148, 341, 294(b), 324, 307, 506(ii) IPC r/w Section 34 IPC, Crime No.1760 of 2016 under Section 341, 294(b), 336, 427, 392, 397, 506(ii) IPC, Crime No.1088 of 2018 under Sections 294(b), 506(ii) IPC, Crime No.1156 of 2018 under Sections 341, 387, 506(ii) IPC, Crime No.175 of 2019 under Sections 147, 148, 341, 294(b), 324, 307 and 506(ii) IPC and Crime No.5554 of 2020 under Section 341, 294(b), 323, 307, 506(ii) IPC and he obtained a bond under Section 110 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short). Subsequently, the petitioner is alleged to have involved in Crime No.11 of 2021 for the offence under Sections 294(b), 341, 384 and 506(ii) of IPC and he was arrested and remanded to the judicial custody. At that time, the respondent herein initiated proceedings under Section 122(1)(b) of Cr.P.C. and summons was issued to the petitioner and he was produced under P.T warrant before the first respondent and the evidence was recorded. 3 witnesses were examined, out of which the complainant was examined as PW.1 but he stated that he has not given any complaint.

3. Subsequently, the Executive Magistrate and Deputy Commissioner of Police, Wannarapet, by his order dated 02.06.2021 has cancelled the bond executed under Section 110 of Cr.P.C., and also imposed the sentence of the remaining bond period. Challenging the said order, the petitioner has filed the present revision.

4. Learned counsel for the petitioner would submit that though on the earlier occasion, an opportunity was given and subsequently, the Advocate was heard and examined. Though 3 witnesses were examined, the defacto complainant has not supported the case of the prosecution. He has stated that he has not given any complaint and so the first respondent without application of mind, simply cancelled the bond. Further, the evidence of PW.3, it is not clear whether the affidavit obtained from the Investigating Officer or Notary Public. Therefore, without considering the evidence of PW.1 and PW.3, the 1st respondent, passed the impugned order on non-application of mind, so it warrant interference.

5. Learned Government Advocate would submit that the first respondent after giving opportunity to the petitioner, passed



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impugned order and he was involved in several cases in Crime No.1748 of 2016 under Sections 147, 148, 341, 294(b), 324, 307, 506(ii) IPC r/w Section 34 IPC, Crime No.1760 of 2016 under Section 341, 294(b), 336, 427, 392, 397, 506(ii) IPC, Crime No.1088 of 2018 under Sections 294(b), 506(ii) IPC, Crime No.1156 of 2018 under Sections 341, 387, 506(ii) IPC, Crime No.175 of 2019 under Sections 147, 148, 341, 294(b), 324, 307 and 506(ii) IPC and Crime No.5554 of 2020 under Section 341, 294(b), 323, 307, 506(ii) IPC. He is a habitual offender. Therefore, the police obtained the bond executed under Section 110 of Cr.P.C. Subsequently, he breached the condition of the bond and involved in another case. Therefore, the first respondent initiated proceedings under Section 122(1)(b) of Cr.P.C. and an opportunity was given and after considering the evidence, concluded that he is involved in Crime No.11 of 2021, during the bond period. Therefore, while initiating proceedings under Section 122(1)(b) Cr.P.C., during the bond period, the first respondent is to verify whether the petitioner is involved in any other case or not and accordingly, on a finding that the petitioner is involved in the ground case in Crime No.11 of 2021, proceedings under Section 122(1)(b) of Cr.P.C., was initiated and passed the impugned order and therefore, there is no merit in the present criminal revision and the same is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. Admittedly, the petitioner is involved in several cases as stated above and executed a bond under Section 110 of Cr.P.C and subsequently, the case in Crime No.11 of 2021 was also registered. In that, he was arrested and remanded and subsequently, the respondent initiated proceedings under Section 122(1)(b) of Cr.P.C., against the petitioner and cancelled the bond and imposed punishment of detention for the remaining bond period. However, as contended by the learned counsel for the petitioner during the proceedings under Section 122(1)(b) of Cr.P.C., the defacto complainant in Crime No.11 of 2021 was examined as PW.1 and he has stated that he has not given any complaint and no offence whatsoever alleged against the petitioner, therefore, the very foundation of the arrest does not arise. As stated by the learned Government Advocate (Crl.Side) the scope of Section 122(1)(b) of Cr.P.C., is very limited that as to whether the petitioner is involved in any other cases during the bond period. In this case, during the bond period, the ground case in Crime No.11 of 2021 is registered and the issue is whether the said ground case is genuine or not. It has to be decided only at the time of investigation.



8. Admittedly, in this case, the prosecution investigated and charge sheet also filed and the same was taken on file. Therefore, after trial only, it has to be decided that whether the case is genuine or not. It can be decided only after trial and not at the present stage. However, the proceedings under Section 122(1)(b) of Cr.P.C., the defacto complainant was examined and the defacto complainant stated that he has not given any complaint. Therefore, the first respondent ought not to have passed the impugned order by cancelling the bail bond and under these circumstances, the orders passed by the respondent, is without any application of mind. Hence, the impugned order of the first respondent dated 02.06.2021, is set aside. Further, the learned Magistrate concerned, is directed to proceed with the case uninfluenced by the present order. The observation made by this Court has nothing to do with the criminal case pending against the petitioner.

9. Accordingly, the criminal revision is allowed. Consequently, the connected criminal miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

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



4.The Public Prosecutor,
High Court, Madras.

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+1cc to Mr.V.Parthiban, Advocate Sr.33112

Cr1.R.C.No.395 of 2021

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