

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.405 OF 2021

&

CRL.M.P.NO.6535 OF 2021

Aruchamy

... Petitioner/
Respondent

Vs.

1. The Executive Magistrate and
Sub Collector (i/c),
Dharapuram-Cum-Assistant Commissioner (P.E.W),
Tiruppur District. ... 1st Respondent
2. State Rep. by
The Inspector of Police,
Prohibition Enforcement Wing,
Dharapuram, Tiruppur District. 2nd Respondents/
Petitioners

PRAYER:

Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the order passed in M.C.No.35 of 2021/E vide an order dated 14.06.2021, on the file of the first respondent.

For Petitioner : Mr.S.N.Arunkumar

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 14.06.2021 in M.C.No.35 of 2021/E .

2. It is the case of the second respondent that the petitioner executed a bond for keeping good behaviour for a period of six months, under Section 110 of Cr.P.C. in Crime No.681 of 2020, on 23.02.2021. Thereafter, the petitioner

involved in other case in Crime No.875 of 2021, for the offence under Sections 4(1)(a), 4(1)(b), 4(1)(g), 4(1-A) TNP Act. Since the petitioner had indulged in the other offences immediately to the execution of bond, the first respondent passed the detention order on 14.06.2021, detaining the petitioner for a period of 83 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 produced before the first respondent on 11.06.2021 on P.T. warrant and was asked to appear on 14.06.2021 for trial and on the same day, viz., 14.06.2021, itself, the order was passed by the first respondent and as such, before cancellation of bond, sufficient time was not given to engage the counsel. It is further submitted that due to curfew on account of Covid-19 pandemic, no counsel could be engaged. Hence, the order passed by the first respondent is legally unsustainable and prays for setting aside the order passed by the second respondent.

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 for a period of 83 days 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 23.02.2021. During the pendency of the said bail bond, the petitioner was involved in other case, viz., Crime No.875 of 2021, was registered for the offence under Sections 4(1)(a), 4(1)(b), 4(1)(g), 4(1-A) TNP Act and hence, the petitioner was arrested and remanded to judicial custody. 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 11.06.2021 on P.T.warrant. After due enquiry, the first respondent on 14.06.2021 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 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 14.06.2021 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.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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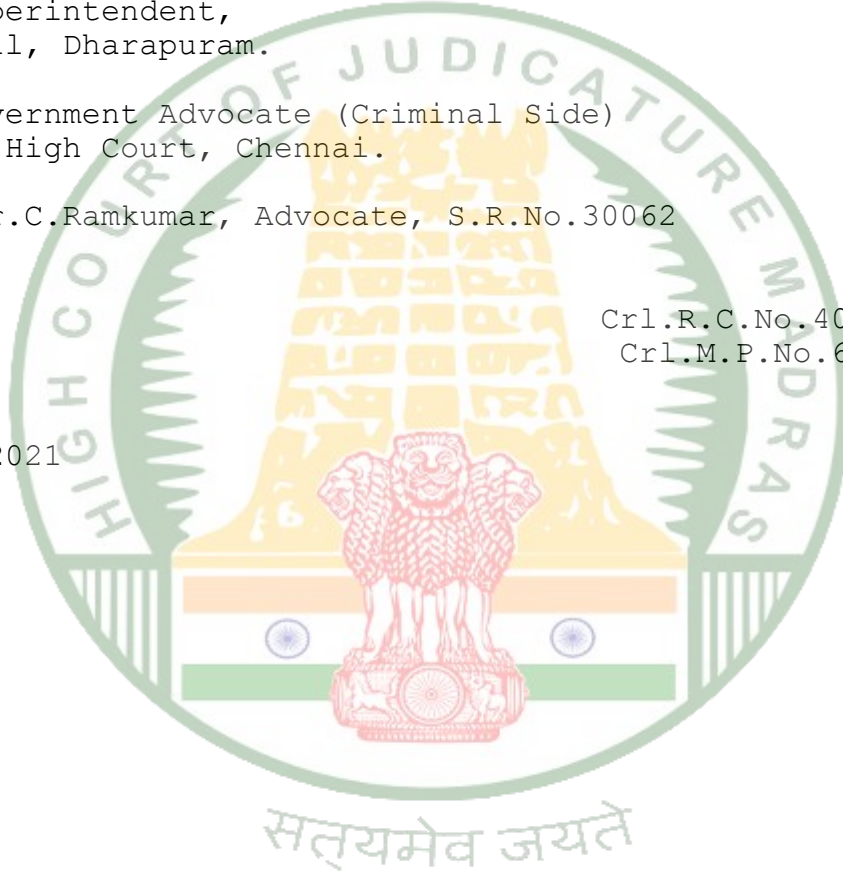
To

1. The Executive Magistrate and
Sub Collector (i/c),
Dharapuram-Cum-Assistant Commissioner (P.E.W),
Tiruppur District.
2. The Inspector of Police,
Prohibition Enforcement Wing,
Dharapuram, Tiruppur District.
3. The Superintendent,
Sub Jail, Dharapuram.
4. The Government Advocate (Criminal Side)
Madras High Court, Chennai.

+lcc to Mr.C.Ramkumar, Advocate, S.R.No.30062

Crl.R.C.No.405 of 2021 &
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RSV(CO)
CS/01/07/2021



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