



IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 30.07.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.428 of 2021  
and CrI.M.P.No.6928 of 2021

Dhayalan

... Petitioner/ Accused

..vs..

1.The Sub-Divisional Executive Magistrate,  
Revenue Divisional Officer,  
Vaniyambadi,  
Thirupathur District.

2.State Represented by  
The Inspector of Police,  
Ambur Town Police Station,  
Thirupathur District. ... Respondents/Complainants

Criminal Revision Case filed under Section 397 (1) and 401 Cr.P.C, to set aside the detention order passed by the Sub-Divisional Executive Magistrate, Revenue Divisional Officer, Vaniyambadi, Thirupathur District in M.C.No.A-3.1703/2021 dated 06.07.2021 sentencing to undergo imprisonment till the bond period i.e. 25.11.2021.

For Petitioner : Mr.V.Gopinath  
Senior Counsel for  
Mr.L.Mahendran

For Respondents : Mr.S.Sugendran  
Government Advocate (CrI.Side)

O R D E R

This Criminal Revision Case has been filed against the order dated 06.07.2021 passed in M.C.No.A-3.1703/2021 by the Sub-Divisional Executive Magistrate, Revenue Divisional Officer, Vaniyambadi, Thirupathur District.

2.The case of the prosecution is that the petitioner was alleged to have involved a case in Crime No.1949 of 2020 for the offence punishable under Sections 294(b), 323, 324 and 506



(ii) IPC on the file of the second respondent/police. 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 cases in Crime No.542 of 2021 for the offence punishable under Sections 294(b), 324 and 506(ii) IPC and in Crime No.543 of 2021 for the offence punishable under Sections 341, 294(b), 392, 397 of IPC r/w Section 3(1) of TNPPDL Act, 1992 against the petitioner and he was arrested and remanded to judicial custody. While, the petitioner was in custody, on Prisoner's Transit Warrant, the petitioner was produced before the first respondent on 06.07.2021. After due enquiry, the first respondent initiated proceedings under Section 122 (1) (b) of Cr.P.C and cancelled the bail bond executed under Section 110 Cr.P.C and detained the petitioner till 25.11.2021. Challenging the said impugned order, the petitioner is before this Court.

3.The learned counsel for the petitioner would submit that while, the petitioner was in custody in Crime Nos.542 and 543 of 2021, on Prisoner's Transit Warrant, he was produced before the first respondent and without affording any opportunity to the petitioner to engage a counsel to defend his case and the first respondent passed the order under Section 122(1) (b) Cr.P.C. Therefore, the impugned order passed by the first respondent is liable to be set aside.

4.The learned Government Advocate (Crl.Side) would submit that after providing sufficient opportunity only the petitioner was produced before the first respondent for enquiry. At the time of trial, the petitioner has not raised any request regarding legal assistance, but, now, the petitioner has raised the said objection. Hence, there is no merit in this case and the same may be liable to be dismissed.

5. Heard the learned counsel on either side and perused the materials available on record.

6. Admittedly, the second respondent police registered the case in Crime No.1949 of 2020 for the offence punishable under Sections 294(b), 323, 324 and 506(ii) IPC against the petitioner and on execution of bail bond, the petitioner was involved in cases in Crime No.542 of 2021 for the offence punishable under Sections 294(b), 324 and 506(ii) IPC and in Crime No.543 of 2021 for the offence punishable under Sections 341, 294(b), 392, 397 of IPC r/w Section 3(1) of TNPPDL Act, 1992. Thereafter, the first respondent police initiated action against the petitioner under Section 122(1) (b) of Cr.P.C for the breach of bond executed under Section 110 Cr.P.C.



7. On a careful perusal of the records, it is seen that the petitioner was summoned before the first respondent on Prisoner's Transit Warrant, however, no opportunity was provided to the petitioner to engage a counsel.

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8. It is a well settled proposition of law, 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 respondent police/Court to provide legal assistance through Legal Services Authority. This Court, time and again, gave directions to the authorities concerned to provide sufficient opportunity to the petitioner to defend his case. In the present case, the first respondent neither has given an opportunity to the petitioner to engage a counsel on his own nor to engage a counsel through Legal Services Authority, which amounts to denial of justice.

9. In such a view, the order passed by the first respondent dated 06.07.2021 is hereby set aside and the matter is remitted back to the first respondent for fresh consideration. The first respondent is 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 and dispose of the case in accordance with law as early as possible. The petitioner shall co-operate with the respondents for enquiry.

10. With the above direction, this Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Ambur, Thirupathur District.

2. The Sub-Divisional Executive Magistrate,  
Revenue Divisional Officer,  
Vaniyambadi,  
Thirupathur District.



3.The Inspector of Police,  
Ambur Town Police Station,  
Thirupathur District.

4.The Superintendent,  
Central Prison,  
Vellore.

5.The Public Prosecutor,  
High Court, Madras.

Copy to:

The Section Officer,  
Criminal Section,  
High Court, Madras

+1cc to Mr.L.Mahendran, Advocate SR.No. 36866  
Criminal Revision Case No.428 of 2021  
and CrI.M.P.No.6928 of 2021

EV CO

A.SK(18.08.2021)