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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRIMINAL REVISION CASE NO.502 OF 2021

Vinoth Kumar

... Petitioner

..Vs..

1. Sub-divisional Magistrate and
Revenue Divisional Officer
Tiruppur

2. State by Inspector of Police
Perumanallur Police Station
Tiruppur District

... Respondent

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code, praying to set aside and revise the Judgment dated 07.05.2021 passed by the 1st respondent / Sub-divisional Magistrate and Revenue Divisional Officer, Tiruppur in M.C.No.42/2021/A1 in Perumanallur Police Station, Tiruppur in Crime No.139 of 2021 under Section 147, 148, 294(b), 323, 324, 506(2) of IPC.

For Petitioner : Mr.J.Franklin

For Respondent : Mr.S.Sugendran
Government Advocate (Crl. Side)

O R D E R

(The case has been heard through video conference)

This Criminal Revision has been filed seeking to set aside and revise the Judgment in M.C.No.42/2021/A1 dated 07.05.2021 passed by the 1st respondent/Sub-divisional Magistrate and Revenue Divisional Officer, Tiruppur, in Crime No.139 of 2021 on the file of the Perumanallur Police Station, Tiruppur.

2. The case of the petitioner is that the petitioner had involved in Crime No.111 of 2019 for the offence punishable under Section 379 IPC and in Crime No.322 of 2019 for the offence punishable under Sections 397 read with 392 IPC. While the cases were pending, the petitioner was asked to execute a



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bond under Section 109 Cr.P.C. to maintain good behaviour. Accordingly, he executed the bond and during the pendency of the bond, the petitioner again involved in another case and thereby, a case in Crime No.139 of 2021 was registered against the petitioner on 08.04.2021 for the offences punishable under Sections 147, 148, 294(b), 323, 324 and 506(2) IPC based on the complaint given by one Arunagiri. Therefore, the petitioner was issued summon by the 1st respondent based on the recommendation of the 2nd respondent regarding initiation of proceedings under Section 122 (1)(b) Cr.P.C. following which, the petitioner was produced before the 1st respondent on 05.05.2021. Subsequently, the impugned order was passed on 07.05.2021 and the bond executed by the petitioner under Section 109 Cr.P.C. was cancelled and the petitioner was sentenced to undergo the remaining bond period. Challenging the said order of cancellation of bail bond, the present revision has been filed before this Court.

3. The learned Counsel for the petitioner would submit that without furnishing copies and without giving opportunity to the petitioner, the impugned order has been passed which warrants interference of this Court.

4. The learned Government Advocate (Crl.Side) would submit that the defacto complainant during investigation has clearly stated that the petitioner had involved in the case in Crime No.139 of 2021. Since, the petitioner breached the bond conditions by involving in the ground case in Crime No.139 of 2021, the proceedings under Section 122(1)(b)Cr.P.C. was initiated against the petitioner and summon was also served on the petitioner on 03.05.2021. Thereafter, the petitioner was produced before the 1st respondent on 05.05.2021. Subsequently, the impugned order was passed on 07.05.2021 and the bond executed by the petitioner under Section 109 Cr.P.C. was cancelled.

5. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondents and perused the records.

6. Perusal of records shows that the petitioner had already involved in Crime No.111 of 2019 for the offence punishable under Section 379 IPC and in Crime No.322 of 2019 for the offence punishable under Sections 397 read with 392 IPC. Therefore, the petitioner was asked to execute a bond under Section 109 Cr.P.C. to maintain good behaviour. Accordingly, he executed the bond and during the pendency of the bond, the petitioner is alleged to have involved in the ground case in Crime No.139 of 2021. Therefore, proceedings under Section 122 (1)(b) Cr.P.C. was initiated by the 1st respondent/Sub-divisional



Magistrate and Revenue Divisional Officer, Tiruppur, and the petitioner was asked to give his explanation. Thereafter, the petitioner was produced before the 1st respondent/Sub-divisional Magistrate and Revenue Divisional Officer, Tiruppur on 05.05.2021. Subsequently, the impugned order was passed on 07.05.2021 and the bond executed by the petitioner under Section 109 Cr.P.C. was cancelled.

7. A careful reading of the order passed by the 1st respondent shows that no opportunity was given to the petitioner to defend his case. It is a settled proposition of law that when an accused is in custody and if any proceedings has to be initiated by any authority, sufficient opportunity should be given to the accused to defend his case by engaging a counsel by himself or otherwise, the authority or the Court concerned has to provide a Legal Aid Counsel through the Legal Services Authority. In this case, the said procedure has not been followed by the 1st respondent which violates the constitutional rights. Therefore, this Court is inclined to set aside the order passed by the 1st respondent on the ground of non providing opportunity to the petitioner to defend his case.

8. Accordingly, the order passed by the 1st respondent/Sub-divisional Magistrate and Revenue Divisional Officer, Tiruppur, in M.C.No.42/2021/A1 dated 07.05.2021 is set aside. The matter is remitted back to the 1st respondent and the 1st respondent is directed to initiate a fresh proceedings after serving all the copies to the petitioner and after giving sufficient opportunity to the petitioner to engage a counsel on his own. In case, if the petitioner is unable to engage a counsel, the 1st respondent has to provide a Legal Aid Counsel through the District Legal Services Authority and dispose the matter in accordance with law.

9. With the above observations, this Criminal Revision case is allowed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Sub-divisional Magistrate and
Revenue Divisional Officer
Tiruppur
2. The Inspector of Police
Perumanallur Police Station
Tiruppur District
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.J.Franklin, Advocate, S.R.No.43859

Cr1.R.C.No.502 of 2021

PA (CO)
CS/03/09/2021