

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM:

THE HON'BLE MR. JUSTICE P.VELMURUGAN

CRIMINAL REVISION CASE NO.557 OF 2021

AND

CRL.M.P.NO. 9124 OF 2021

Papula @ Abdul Vasim

...Petitioner

Versus

1.The Executive Magistrate cum Deputy Commissioner,
Washermenpet District,
New Washermenpet, Chennai 600 0081.

2.State Rep. by
The Inspector of Police, (Law & Order)
H - 8, Thiruvottiyur Police Station,
Chennai 600 019.

...Respondents

Criminal Revision Case filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the impugned order dated 28.07.2021 under Section 122 (1) (b) of Cr.P.C in LR. No. 182/Sec. Pro/DCP-WPT/2021 in H-8, Thiruvottiyur P.S., S.I. No.26/2021 under Section 110 of Cr.P.C on the file of the Executive Magistrate cum Deputy Commissioner, Washermenpet, Chennai).

For Petitioner : Mr.A.Thirumaran

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

O R D E R

This Criminal Revision Case has been filed against the order dated 28.07.2021 under Section 122 (1) (b) of Cr.P.C in LR. No. 182/Sec. Pro/DCP-WPT/2021 in H-8, Thiruvottiyur P.S., S.I. No.26/2021 under Section 110 of Cr.P.C on the file of the Executive Magistrate cum Deputy Commissioner, Washermenpet, Chennai).

2.The case of the prosecution is that the petitioner executed a bail bond under Section 110 Cr.P.C to maintain peace for a period 365 days. During the said bond period, the petitioner involved in another case in Crime No.2205 of 2021 for the offence punishable under Section 379 IPC, based on which, the second respondent police registered a case against

the petitioner. The first respondent, after enquiry, passed the impugned order dated 28.07.2021 and committed the accused to undergo imprisonment for 354 days under Section 122(1)(b) Cr.P.C. Challenging the said impugned order, the petitioner is before this Court.

3.The learned counsel for the petitioner would submit that without affording any opportunity to the petitioner to engage a legal aid counsel to defend his case, the first respondent passed the impugned order, which violates the rights of the accused. 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 the petitioner is a habitual offender. During the said bond period, the petitioner obtained anticipatory bail and involved in another case in Crime No.2205 of 2021for the offence under Section 379 of IPC. After due enquiry, he was remanded in the custody and sufficient opportunity was given to him to disprove the allegation but he did not utilize it. After examining the witnesses, 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. Hence, there is no merit in this case and the same may be liable to be dismissed.

5 The petitioner executed a bail bond under Section 110 Cr.P.C to maintain peace for a period 365 days, however, subsequently he was arrested for offence 379 IPC and proceedings were initiated under section 122 (1) (b) of Cr.P.C and he was produced before the Executive Magistrate cum Deputy Commissioner, Washermenpet, Chennai and he was committed to undergo imprisonment for 354 days.

6. It is well settled proposition of law that 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.

7. In such a view, the order passed by the first respondent/Executive Magistrate cum Deputy Commissioner, dated 28.07.2021 is hereby set aside. Further, the Director General of Police is directed to take action against the respondents for not following the repeated directions given by this court.

8.With the above direction, this Criminal Revision Case is allowed. Connected MP closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ms/pbl

To

1.The Executive Magistrate cum Deputy Commissioner,
Washermenpet District,
New washermenpet, Chennai 600 0081.

2.The Inspector of Police, (Law & Order)
H - 8, Thiruvottiyur Police Station,
Chennai 600 019.

3.The Director General of Police,
Greater Chennai.

4.The Superintendent,
Central Prison,
Puzhal, Chennai.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.Thirumaran, Advocate, S.R.No.48295

Criminal Revision Case No.557 of 2021

GSM(CO)

RVM(23/09/2021)