

CRL.R.C.No.1299 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.08.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.No.1299 of 2019

&

CRL.M.P.No.17586 of 2019

Dharshan @ Paipar
S/o, Shivashankar

... Petitioner

Versus

1. The Executive Magistrate cum
Deputy Commissioner of Police,
Anna Nagar District.

2. The State represented by its
The Inspector of Police,(Law & Order),
V1, Villivakkam Police Station,
Chennai – 600 049.

... Respondents

PRAYER: Criminal Revision Petition filed under Section 397 & 401 of the Code of Criminal Procedure, to set aside and revise the order dated 08.04.2019 passed by the first respondent in C.No.07 /Sec.Pro /DC.AN/2019 in V1 Villivakkam P.S.C.No.01/Inspr.V1PS/Sec.Pro./2019 u/s.107 Cr.P.C.

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For Petitioner : Mr.Kaveri Selvam
for Mr.K.S.Kaviarasu

For Respondents : Mr.S.Vinoth Kumar
for Public Prosecutor

ORDER

This Criminal Revision Petition has been filed to set aside and revise the order dated 08.04.2019 passed by the firstrespondent in C.No.07/Sec.Pro/DC.AN/2019 in V1 Villivakkam P.S.C.No.01 /Inspr. V1PS / Sec.Pro./2019 u/s.107 Cr.P.C.

2. The case of the petitioner is that the petitioner had involved in cases in Crime No.1459 of 2017 for the offence punishable under sections 341, 323, 302 IPC, Crime No.1461 of 2017 for the offence punishable under sections 341, 336, 427, 392, 397 r/w 307 IPC and in Crime No.1085 of 2018 for the offence punishable under sections 341, 294(b), 506(ii) 392 IPC r/w 397 IPC and subsequently he released on bail. While the cases were pending, the petitioner was asked to execute a bond under section 107 Cr.P.C to maintain peace. Accordingly he

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executed the bond. During the pendency of the bond, the petitioner again involved in another offence and thereby, a case in Crime No.151 of 2019 was registered against the petitioner for the offence punishable under sections 341, 294(b), 323, 336, 392, 397, 506(ii) IPC r/w.3 of TNPPDL Act. The firstrespondent initiated proceedings under section 122(1)(b) Cr.P.C based on the report filed by the second respondent and the petitioner was produced before the firstrespondent and after enquiry, the first respondent passed an order by cancelling the bond and sentenced him to undergo the remaining bond period. Challenging the said order of cancellation of bail bond, the present revision has been filed by the petitioner.

3. The learned Government Advocate (Criminal Side) appearing for the respondents would submit that the petitioner had involved in various cases in Crime No.1459 of 2017, Crime No.1085 of 2018 and Crime No.1085 of 2018 and he was granted bail and subsequently he executed a bond under Section 107 Cr.P.C to maintain good behavior. However, again the petitioner involved in another case in Crime No.151

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of 2019 for the offence punishable under sections 341, 294(b), 323, 336, 392, 397, 506(ii) IPC r/w.3 of TNPPDL Act and he was arrested and remanded to judicial custody 05.04.2019. Since the petitioner breached the condition imposed in the bail order as well as in the bond executed under Section 107 Cr.P.C, the second respondent filed a report before the first respondent and after giving opportunity, the first respondent cancelled the bond executed by the petitioner under section 107 Cr.P.C and also sentenced the petitioner to undergo the remaining bond period. The first respondent was satisfied that during the bond period, the petitioner involved in another case and therefore prima facie found that the petitioner breached the bond and therefore, the proceedings was initiated under section 122(1)(b) of Cr.P.C. Therefore, there is no violation of Principles of Natural Justice and there is no merit in the revision.

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4. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and also perused the materials available on record.

5. It is seen that the petitioner had involved in various cases in Crime No.1459 of 2017, Crime No.1085 of 2018 and Crime No.1085 of 2018 and he was granted bail and subsequently he executed a bond under Section 107 Cr.P.C to maintain good behavior and accordingly, he executed a bond. Thereafter, during bond period, the petitioner is alleged to have involved in another case in Crime No.151 of 2019 for the offence punishable under sections 341, 294(b), 323, 336, 392, 397, 506(ii) IPC r/w.3 of TNPPDL Act and he was arrested and remanded to judicial custody 05.04.2019. Subsequently, the proceedings under Section 122 (1)(b) Cr.P.C. was initiated by the first respondent and the Magistrate passed orders on 08.04.2019 by cancelling the bond executed by the petitioner under Section 107 Cr.P.C. Challenging the same, the petitioner has filed the revision before this Court.

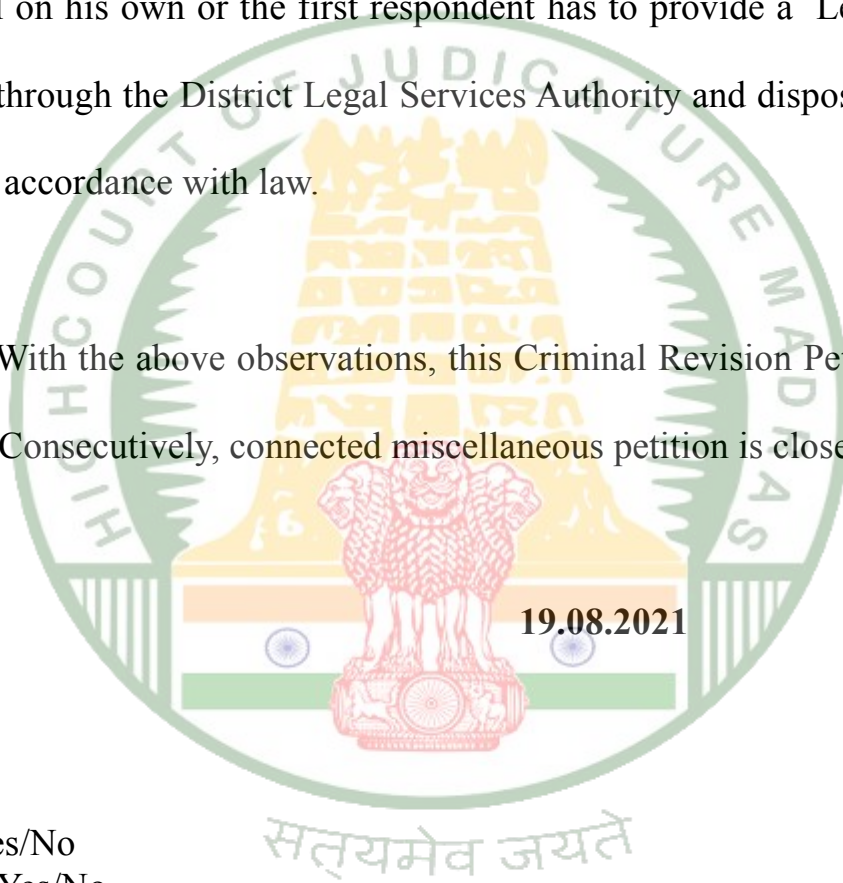
6. A careful reading of the order passed by the first respondent shows that the first respondent, without applying his mind, has passed the order. A perusal of the order shows that the first respondent has

merely mentioned the month and year, leaving the date column unfilled. It shows the extent of non-application of mind on the part of the first respondent while passing the impugned order. Without even conducting proper enquiry, and without giving opportunity to avail legal assistance, he has cancelled the bond and imposed the sentence to undergo imprisonment for the remaining period. Since the order passed by the first respondent suffers from perversity, the same is liable to be set aside.

7. Further this Court is of the opinion 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 failing which, the authority or the Court concerned has to provide a Legal Aid Counsel through Legal Services Authority. In this case, the said procedure has not been followed by the firstrespondent which violates the constitutional rights. Therefore, this Court is inclined to set aside the order passed by the first respondent.

8. In view of the above, the matter is remitted back to the first respondent and the first respondent is directed to initiate a fresh proceedings after giving sufficient opportunity to the petitioner to engage a counsel on his own or the first respondent has to provide a Legal Aid Counsel through the District Legal Services Authority and dispose of the matter in accordance with law.

9. With the above observations, this Criminal Revision Petition is allowed. Consecutively, connected miscellaneous petition is closed.



Index: Yes/No
Internet: Yes/No
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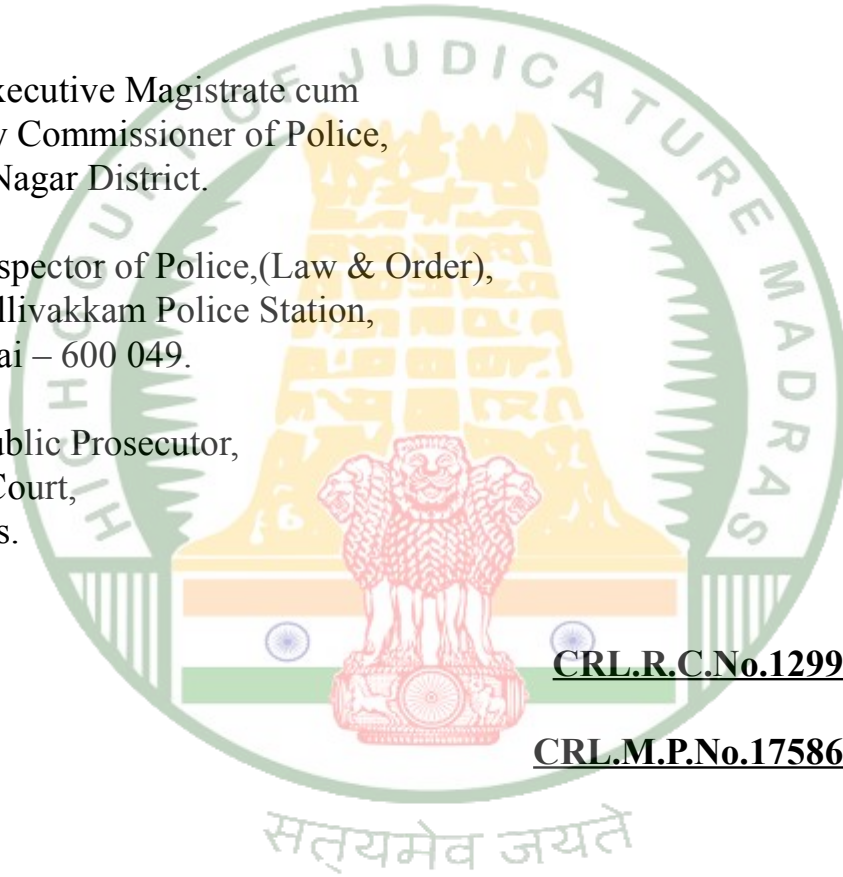
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To

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Deputy Commissioner of Police,
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2. The Inspector of Police,(Law & Order),
V1, Villivakkam Police Station,
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3. The Public Prosecutor,
High Court,
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