



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 22.03.2021

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THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.155 of 2021
and
Crl.M.P.(MD)No.1695 of 2021

Selvam @ Vinothkumar

.. Petitioner

Vs.

1.The Executive Magistrate No.II/
The Tahsildar,
Agasteeswaram Taluk,
Nagercoil, Kanniyakumari District.

2.The Inspector of Police,
Vadaseri Police Station,
Vadaseri, Kanniyakumari District.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

.. Respondents

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records pertaining to the order, dated 05.02.2021 passed by the first respondent / the Executive Magistrate No.II / Tahsildar, Agasteeswaram Taluk, Nagercoil, Kanniyakumari District in Na.Ka.C2/ 803/2021 and to set aside the same.

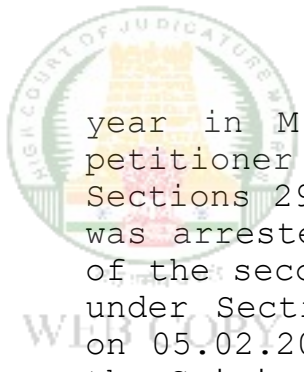
For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.KR.Bharathi Kannan
Government Advocate

ORDER

This Criminal Revision Case has been filed to set aside the order passed by the first respondent, in in Na.Ka.C2/ 803/2021, dated 05.02.2021.

2.Based on the report of the second respondent in LIR No.09 of 2020, the proceedings under Section 110 of Cr.P.C., was initiated by the first respondent and on 17.08.2020, the petitioner has executed a bond for maintaining good conduct for a period of one



year in M.C.No.865 of 2020. Subsequently, on 18.12.2020, the petitioner involved in another offence in Crime No.12 of 2021 under Sections 294(b), 323, 506 (ii) of IPC and Section 4 of TNPHW Act and was arrested on 08.01.2021 and is in custody. Based on the report of the second respondent, the first respondent initiated proceedings under Section 122(1)(b) of Cr.P.C., and passed the impugned order, on 05.02.2021. Against the impugned order, the petitioner preferred the Criminal Revision Case.

3.On the side of the petitioner, it is stated that the petitioner executed a bond on 18.12.2020 and he was arrested in another case on 08.01.2021. On 25.01.2021, a show cause notice was issued to the petitioner and he appeared before the first respondent on 29.01.2021. The investigating officer and the complainant were examined on 02.02.2021 and one more witness was examined on 03.02.2021. Copies of the documents were not furnished to the petitioner. Though it is stated that the petitioner cross examined the witnesses, no such discussion as to the cross examination was made in the impugned order. No legal assistance or opportunity was given to the petitioner. The first respondent failed to follow all the 10 guidelines for the proceedings under Section 122 (1)(b) Cr.P.C. and prayed the impugned order to be set aside.

4.On the side of the respondents, it is stated that the petitioner executed a bond on 18.12.2020, subsequently, he was arrested on 08.01.2021 and he is having nine previous cases and the first respondent issued a show cause notice on 25.01.2021. The petitioner has violating the condition imposed in the bond. The petitioner is a history sheeter in H.S.No.5 of 2015. All the procedures are scrupulously followed before passing the impugned order and prayed the petition to be dismissed.

5.It is seen that the petitioner has executed a bond in M.C.No.865 of 2020, on 18.12.2020. A case in Crime No.12 of 2021 was registered against the petitioner, on 08.01.2021, under Sections 294(b), 323, 506 (ii) of IPC and Section 4 of TNPHW Act. On the report of the second respondent, the first respondent initiated proceedings under section 122(1)(b) Cr.P.C. and issued the show cause notice on 25.01.2021. The petitioner appeared before the first respondent on 29.01.2021. In the impugned order, there is no statement whether the documents were furnished to the petitioner. It is seen that no legal assistance was provided to the petitioner. Only based on the involvement of the petitioner in nine previous cases, the impugned order was passed by the first respondent. The first respondent failed to mention his satisfaction regarding the necessity for passing this order.

6.In the above circumstances, this Court is inclined to set aside the order passed by the first respondent. Hence, the impugned order dated 05.02.2021, in Na.Ka.No.C2/803/2021, passed by



the first respondent is hereby set aside and this Criminal Revision Case is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Executive Magistrate No.II/
The Tahsildar,
Agasteeswaram Taluk,
Nagercoil, Kanniyakumari District.
- 2.The Inspector of Police,
Vadaseri Police Station,
Vadaseri, Kanniyakumari District.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-12756[F] dated 22/03/2021)

Crl. R.C. (MD) No.155 of 2021
22.03.2021

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