



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 29.03.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.233 of 2021

and

Crl.M.P.(MD)Nos.2446 and 2447 of 2021

Maharajan @ Muttaiakan Maharajan .. Petitioner /Accused

Vs.

State rep. By

1.The Deputy Commissioner of Police,
Law and Order cum Executive Magistrate,
Office of the Deputy Commissioner of Police,
Madurai City. ..1st Respondent/Executive Magistrate

2.The Inspector of Police,
D2 Sellur (L & O) Police Station,
Madurai. .. 2nd Respondent/Complainant

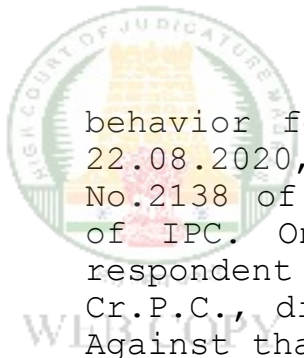
Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records and to set aside the order passed by the first respondent in M.C.No.1140/Ni.Se.Na & Ka.Thu.Aa/Ma.Maa/2020 dated 10.09.2020.

For Petitioner : Mr.M.Ajmal Khan
For Respondents : Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the proceedings passed in M.C.No.1140/Ni.Se.Na & Ka.Thu.Aa/Ma.Maa/2020 dated 10.09.2020, on the file of the first respondent.

2.A case was registered against the petitioner in Crime No.138 of 2020 under Section 110 of Cr.P.C. In M.C.No.1140/Ni.Se.Na &Ka.Thu.Aa/Ma.Maa/2020, the petitioner executed a bond before the first respondent under Section 110 of Cr.P.C., for maintaining good



behavior for a period of one year on 18.08.2020. Subsequently on 22.08.2020, a case was registered against the petitioner in Crime No.2138 of 2020 under Section 25(1)(A) of Arms Act and Section 398 of IPC. On the requisition of the second respondent, the first respondent passed the impugned order under Section 122(1)(b) of Cr.P.C., directing the petitioner to be in custody till 17.08.2021. Against that order, the petitioner preferred this revision petition.

3.On the side of the petitioner, it is stated that the petitioner was released on bail on subsequent cases. The first respondent is not having the jurisdiction to pass an order under Section 122(1)(b) of Cr.P.C. No opportunity was given to the petitioner. Though it is stated that the petitioner has cross examined the witnesses, there is no such discussion about the cross examination in the impugned order. The impugned order clearly reveals that the first respondent has passed the order without application of mind and prayed the impugned order to be set aside.

4.On the side of the respondents, it is stated that based on the report of the second respondent, the first respondent has made an enquiry. During the enquiry, the petitioner executed a bond under Section 110 of Cr.P.C., in M.C.No.1140/Ni.Se.Na &Ka.Thu.Aa/Ma.Maa/2020. Subsequently, on 22.08.2020, the petitioner was arrested in Crime No.2138 of 2020 under Section 25(1)(A) of Arms Act and Section 398 of IPC. On the report of the second respondent, the first respondent initiated proceedings under Section 122(1)(b) of Cr.P.C. A show cause notice was issued to the petitioner. The petitioner was given opportunity to cross examine. The petitioner has chosen to cross examine the witness himself. On 01.09.2020, he cross examined two of the witnesses. At the request of the petitioner, the proceedings was adjourned to 04.09.2020. The petitioner cross examined one witness by name Ravi and another witness Chidambaram on 10.09.2020, the petitioner cross examined witness Silambarasan. The petitioner did not cross examine the Sub Inspector Chinnapandi. Convincing on the evidence of P.W.1 to P.W.5, the first respondent after following due procedures, satisfied himself and passed the impugned order and prayed the petition to be dismissed.

5.The averments putforth by the petitioner in the cross examination of witness was not discussed by the first respondent. It is seen that no previous case was mentioned by the respondent in the counter. There is no statement as to the furnishing of copies of the document to the petitioner. The cross examination of the witnesses by the petitioner was not mentioned in the impugned order. The impugned order is liable to be set aside.

6.In the result, the Criminal Revision Case is allowed. The petitioner is directed to be released forthwith, unless his presence



is required in any other case. Consequently, miscellaneous petition are closed.

Sd/-

Assistant Registrar

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Mrn

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 Deputy Commissioner of Police,
Law and Order cum Executive Magistrate,
Office of the Deputy Commissioner of Police,
Madurai City.
- 2.The Inspector of Police,
D2 Sellur (L & O) Police Station,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent,
Central Prison, Madurai.

Crl. R.C.(MD)No.233 of 2021
29.03.2021

sss(CO)

KK(08.04.2021) 3P 5C