



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 01.04.2021

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THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.241 of 2021
and Crl.M.P.(MD)No.2485 of 2021

Jose @ Thangajose .. Petitioner/Respondent

Vs.

1.The Executive Magistrate No.II Cum
Tahsildar, Thoivalai,
Kanyakumari District.

2.The Inspector of Police,
Aralvoimozhi Police Station,
Kanyakumari District
Cr No. 7/2021.

.. Respondents

Prayer : This criminal revision case is filed under Sections 397 r/w 401 of Cr.P.C., to call for the records to set aside the order dated 10.02.2021 made in Na.Ka.No.A4/196/2021 on the file of the 1st respondent and release the Detenue namely Jose alias Thangajose. S/o.Moses Roy aged about 20 years detained in Central Prison, Palayamkottai.

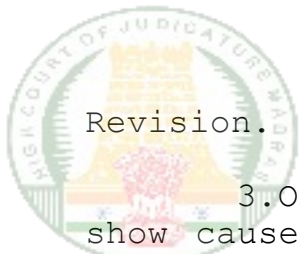
For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondents : Mrs.S.Bharathi
Government Advocate

ORDER

This Criminal Revision Case has been filed to set aside the order dated 10.02.2021 made in Na.Ka.No.A4/196/2021 on the file of the 1st respondent

2.On the report of the second respondent, the first respondent initiated proceedings in L.I.R.No.11/Security/N5 Ps/2020, in M.C.No.06 of 2020, has obtained a bond from the revision petitioner to maintain peace and good behavior for a period of one year on 10.08.2020. Subsequently, 04.01.2021, the petitioner involved in another case in Crime No.07 of 2021 and he was arrested. On the report of the second respondent, the first respondent initiated proceedings and passed the impugned order on 10.02.2021. Against the impugned order, the petitioner preferred this Criminal



Revision.

3.On the side of the revision petitioner, it is stated that show cause notice was issued to the petitioner on 02.01.2021. No opportunity was given to the petitioner, only within 24 hours, the petitioner was produced before the first respondent. Since the petitioner was in custody, he could not file any reply on 08.02.2021. Copies of documents were not furnished to the petitioner. Legal assistance was not provided to the petitioner. The order was passed on 10.02.2021 and prayed the impugned order to be set aside.

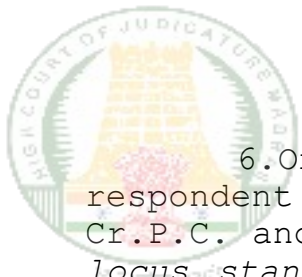
4.On the side of the petitioner, it is stated that the first respondent is not having the jurisdiction to pass the order. A judgment of this Court reported in **2019 (2) MWN (Criminal) 136 (P.Sathish @ Sathish Kumar Vs. State)** is cited.

5.On the side of the respondent, it is stated that on the report of the second respondent in L.I.R.No.11/Security/N5 Ps/2020, after a detail enquiry the first respondent directed the petitioner to execute a bond in M.C.No.06 of 2020, on 10.08.2020, to maintain peace and good behavior for a period of one year. But, subsequently, the petitioner involved in another offence in Crime No.7 of 2021 under Section 392 r/w. 397 and 506 (ii) I.P.C. and he was arrested on 04.01.2021. On the report of the second respondent, the first respondent initiated the proceedings under Section 122(1) (b) Cr.P.C. and after following all the procedures, the impugned order was passed by the first respondent and that the petitioner involved in four previous cases. The four previous cases are as follows:

SI. No.	Name of the Police Station	Crime No. and Sections	Present Stage of the Case
1.	Aralvaimozhi	Cr.No.345 / 2018 U/s.323, 506(ii) I.P.C., 4 of TNPWH Act	PT, C.C.No.18 / 2019 dated 21.02.2019
2.	Aralvaimozhi	Cr.No.44 / 2019 U/s.323, 506(ii) I.P.C., 4 of TNPWH Act	Charge sheet filed
3.	Aralvaimozhi	Cr.No.77 / 2019 U/s.294(b) I.P.C.,	Convicted fine Rs.1000/- on 13.07.2019
4.	Aralvaimozhi	Cr.No.321 / 2020 U/s.294(b), 324,, 506 (ii) I.P.C.,	Charge sheet filed

and prayed the petition to be dismissed.

<https://hcservices.ecourts.gov.in/hcservices/>



6.On the side of the respondent, it is stated that the first respondent is having power to pass the order under Section 110 Cr.P.C. and the question raised by the revision petitioner regarding *locus standi* of the first respondent is pending before the Larger Bench. The power of the first respondent was not cancelled by any Court or by any Government Order.

7.A perusal of the impugned order reveals that no copies of documents were furnished to the petitioner. No enquiry was conducted. No witness was examined by the first respondent. Only based on the report of the second respondent, the impugned order was passed. Since the procedures are not duly followed by the first respondent, the impugned order passed by the first respondent is hereby set aside.

8.Hence, this Criminal Revision Case is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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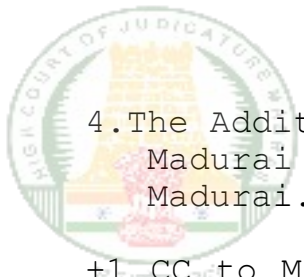
Sub Assistant Registrar(CS)

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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 Cum
Tahsildar, Thovalai,
Kanyakumari District.
- 2.The Inspector of Police,
Aralvoimozhi Police Station,
Kanyakumari 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.C.MAYIL VAHANA RAJENDRAN, Advocate (SR-15129[F] dated
01/04/2021)

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01.04.2021

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