



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.04.2021

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**THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI**

Crl.R.C (MD) No.235 of 2021  
and  
Crl.MP (MD) No.2465 of 2021

Sermam : Revision Petitioner/Offender

Vs.

1.The Sub-Divisional Executive Magistrate  
and Revenue Divisional Officer,  
Tenkasi, Tenkasi District.

2.State Rep. by  
The Inspector of Police,  
Uthumalai Police Station,  
Tenkasi District.

(Crime No.528 of 2020) : Respondents/Complainants

**Prayer:** Criminal Revision has been filed under section 397 r/w 401 of Criminal Procedure Code, against the order passed in A2/MCP/No.25/2020, dated 02.02.2021 on the file of the Sub Divisional Executive Magistrate and Revenue Divisional Officer, Tenkasi.

For Petitioner : Mr.K.Sivabalan

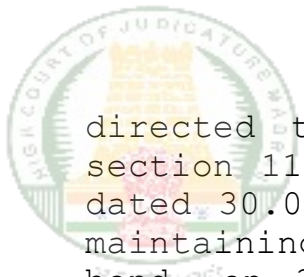
For Respondents : Mr.A.Robinson  
Government Advocate  
(Criminal side)

### **O R D E R**

This criminal revision is directed against the order passed in A2/MCP/No.25/2020, dated 02.02.2021 by the first respondent/ Sub Divisional Executive Magistrate and Revenue Divisional Officer, Tenkasi.

2.The short facts of the case is that the petitioner had frequently involved in criminal cases and a report was initiated by the 2<sup>nd</sup> respondent and the same was forwarded to the 1<sup>st</sup> respondent for further action and after perusal of the records,

1<sup>st</sup> respondent issued summon under section 111 Cr.P.C and



directed the petitioner to execute a bond with sureties under section 110 of the Criminal Procedure Code, in MC No.25 of 2020, dated 30.09.2020, for a period of one year for keeping peace and maintaining good behaviour. But unfortunately, after executing the bond, on 31.12.2020 again the petitioner involved in a criminal offence and on the complaint, a case was registered by the Uthumalai Police, in Crime No.528 of 2020 for the offence under sections 294(b), 392 and 506(2) IPC and he was arrested by the 2<sup>nd</sup> respondent police and remanded to the judicial custody. Subsequently, after careful consideration of the documents and statement of the petitioner, the 1<sup>st</sup> respondent has passed the impugned order. Aggrieved by the impugned order passed by the 1<sup>st</sup> respondent, the petitioner is before this court.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The main contention raised on the side of the petitioner is that the 1<sup>st</sup> respondent did not provide reasonable opportunity to defend the case before passing the impugned order. It is the further contention of the petitioner that when without giving reasonable opportunity to defend the case of the petitioner, any order passed by the Executive Magistrate can be set aside. For that, the learned counsel for the petitioner submitted the following judgments:-

*01. AIR (33) 1946 Allahabad 333 (Narain Sahai and others Vs. Emperor);*

*(02). Order of this Court passed in CrI.OP(MD) No.6841 of 2015, dated 10.04.2015 (Malathi Vs. State);*

*(03). 2016 CRI.L.J. 4603 (Bala Vs. Administrative Executive Magistrate, Trichy City);*

*(04). Order of this court passed in CrI.O.P(MD) No.7591 of 2017, dated 21.04.2017 (Rajkumar Vs. State);*

*(05). 2017(1) TLNJ 516 (Criminal) (Sivashanmuga Sundaram Vs. The Executive Magistrate/Deputy Commissioner of Police L & O, Tirunelveli and two others);*

*(06). Order of this Court made in CrI.R.C.No.505 of 2017, dated 05.07.2017 (Selvam @ Selvaraj Vs. The Executive Magistrate-cum-Deputy Commissioner of Police, (Law & Order, Crime and Traffic), Tiruppur City and another);*



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(07).Order of this court passed in CrI.MP(MD) No.7580 of 2018 in CrI.RC(MD)No.542 of 2018, dated 25.09.2018 (Thangam (Mathalai Muthu Vs. The Executive First Class Magistrate-cum-Revenue Divisional Officer, Dindigul); and

(08).Order of this court passed in CrI.MP(MD) No.8387 of 2018 in CrI.RC(MD)No.585 of 2018, dated 28.02.2019 (Amalraj Vs. The Executive First Class Magistrate-cum-Revenue Divisional Officer, Dindigul).

5.On the other hand, the learned Government Advocate (Criminal side) appearing for the respondents argued that the 1<sup>st</sup> respondent has rightly passed the impugned order and the petitioner was a habitual offender and having 6 previous case and prays for dismissal of the criminal revision.

6.A careful perusal of the impugned order would show the non-application of mind of the 1<sup>st</sup> respondent. Merely because certain cases have been registered against the petitioner, the same cannot be said to be sufficient ground leading to prove the breach of bond to the satisfaction of the Magistrate concerned, that too without hearing the affected party. The close reading of Section 122(1)(b) Cr.P.C would clearly show that the Executive Magistrate shall give an opportunity to the petitioner and apply his judicial mind and arrive at his satisfaction that the petitioner had breached the security bond executed by him to keep good behaviour and he must also record the grounds of such proof. As per Section 122(1)(b) CrI.P.C, the 1<sup>st</sup> respondent/Executive Magistrate must record his grounds of satisfaction and he must say whether sufficient cause has been established. But he did not do so. It is complete non-application of mind. The 1<sup>st</sup> respondent passed the impugned order mechanically.

7.At this juncture, it is pertinent to mention the decision reported in **2016(2) TLNJ 228 (Criminal) (Bala @ Balakrishnan and Administrative Executive Magistrate, Trichy City and others,** wherein, it has been held as follows:-

"As per Section 122(1)(b) of Cr.P.C., the Executive Magistrate before ordering a person to be jailed, he shall be satisfied that the person has breached the bond conditions, the Executive Magistrate must also record the grounds for such proof. That means, he must apply his mind and pass orders. He cannot pass order mechanically. But he need not write an elaborate Judgment like us. His orders must show atleast briefly the grounds upon



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which, he has satisfied that the person has breached the bond executed by him. Under Section 122(1)(b) of Cr.P.C., if the said satisfaction is not recorded, it will be presumed that the detention authority sending a person to jail is arbitrary, mechanical, not fair, unjust. The detention order must disclose the grounds of proof, otherwise, the Court cannot see what has transpired in the mind of the Executive Magistrate in passing the detention order, more particularly, when these orders are revisable by the Sessions Judges."

8. Keeping in view of the above facts, this court is of the considered view that the impugned order has not been passed in accordance with law and has been passed mechanically. From the legal position stated above, it is clear that the impugned order has been passed without following the principles of natural justice and the same is liable to be set aside.

9. In fine, this Criminal Revision Petition is **allowed** and the impugned proceedings passed by the 1<sup>st</sup> respondent in A2/MCP/No.25/2020, dated 02.02.2021 is set aside. The Superintendent, Central Prison, Palayamkottai, Tirunelveli is directed to set at liberty the revision petitioner, if his further detention is no longer required in connection with any other case or proceedings. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

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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 Sub-Divisional Executive Magistrate  
and Revenue Divisional Officer,  
Tenkasi, Tenkasi District.

2.The Inspector of Police,  
Uthumalai Police Station,  
Tenkasi District.

3.The Superintendent of Prison,  
Central Prison,  
Palayamkottai, Thirunelveli.

4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

Order made in  
Crl.R.C (MD) No.235 of 2021  
30.04.2021

ES (CO)  
TR(03.05.2021) 5P 5C