



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.04.2021

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

WEB COPY

Crl.R.C(MD)No.280 of 2021

and

Crl.MP(MD)Nos.2781 and 2782 of 2021

Kali Kumar : Revision Petitioner/Petitioner

Vs.

1.The Sub Divisional Magistrate-cum-
Revenue Divisional Officer,
Paramakudi,
Ramanathapuram District.

2.The Inspector of Police,
Mandalamanikkam Police Station,
Ramanathapuram District.

3.The Superintendent of Prison,
Central Prison, Madurai. : Respondents/Complainants

Prayer: Criminal Revision has been filed under section 397 r/w 401 of Criminal Procedure Code, against the order passed by the 1st respondent, in his proceedings in MC No.396 of 2020, dated 17.03.2021.

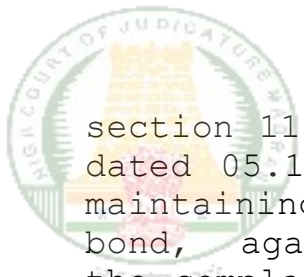
For Petitioner : Mr.M.S.Jeyakarthik

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

O R D E R

This criminal revision is directed against the order passed by the 1st respondent, in his proceedings in MC No.396 of 2020, dated 17.03.2021.

2.The short facts of the case is that the petitioner had frequently involved in criminal cases and a report was initiated by the 2nd respondent and the same was forwarded to the 1st respondent for further action and after perusal of the records, the 1st 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.205 of 2020, dated 05.10.2020 for a period of one year for keeping peace and maintaining good behaviour. But unfortunately, after executing the bond, again the petitioner involved in a criminal offence and on the complaint, a case was registered by the 2nd respondent police, in Crime No.178 of 2020 for the offence under sections 294(b), 323, 324, 427 and 506(ii) IPC and he was arrested by the 2nd respondent police and remanded to the judicial custody. Subsequently, after careful consideration of the documents and statement of the petitioner, the 1st respondent has passed the impugned order. Aggrieved by the impugned order passed by the 1st 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 1st respondent, even without recording the evidence of the first party, who made the complaint against the petitioner, passed the final order and the 1st respondent has not given prior notice or list of witnesses to be examined to the petitioner before passing the impugned order and the 1st 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);

(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 1st respondent has rightly passed the impugned order 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 1st respondent. Merely because a case has 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 1st 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 1st respondent passed the impugned order mechanically.

7.Further perusal of the impugned order, dated 17.03.2021 passed against the petitioner by the 1st respondent, nothing is mentioned about the examination of witnesses, supply of materials, including the report of the Inspector of Police concerned sent to the 1st respondent for arriving at a just conclusion that the petitioner has violated the bond condition and further course of supplying the documents and getting view of reply from the petitioner and the appearance of the petitioner before the 1st respondent and an opportunity of being heard was given to him for the conclusion reached by the 1st respondent.

8.At this juncture, it is pertinent to mention the decision reported in **2016(2) TLNJ 228 (Criminal) (Bala @ Balakrishnan and**

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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 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."

9. 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.

10. In fine, this Criminal Revision Petition is **allowed** and the impugned proceedings passed by the 1st respondent in MC No.396 of 2020, dated 17.03.2021 is set aside. The 3rd respondent 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 Petitions are 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 Magistrate-cum-Revenue Divisional Officer,
Paramakudi,
Ramanathapuram District.
- 2.The Inspector of Police,
Mandalamanikkam Police Station,
Ramanathapuram District.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.R.C (MD) No.280 of 2021
30.04.2021

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