



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 21.10.2021

Pronounced on : 27.10.2021

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CORAM:
THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.R.C. (MD)No.554 of 2021

Iyappan Kutty @ Kuttiyaan

.. Petitioner/Respondent

Vs.

1.The Executive Magistrate-cum-Deputy
Commissioner of Police,
(Law and Order)
Tirunelveli City,
Tirunelveli District.

2.The Inspector of Police (L & O),
Tirunelveli Town Police Station,
Tirunelveli District.

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

.. Respondents

PRAYER: This Criminal Revision Petition is filed under Section 397 r/w. 401 of the Code of Criminal Procedure, against the order of conviction dated 30.03.2021, passed by the first respondent / Executive Magistrate-cum-Deputy Commissioner of Police, vide Proceedings in E.M.C.No.257/Sec/Pre/DC.L & O/Tin-c/2020 and to set aside the same as illegal and to allow this criminal revision petition.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

The present Criminal Revision Case has been filed praying to call for the records pertaining to the order of conviction dated 30.03.2021, passed by the first respondent / Executive Magistrate-cum-Deputy Commissioner of Police, vide Proceedings in E.M.C.No.257/Sec/Pre/DC. L & O/Tin-c/2020 and to set aside the same as illegal by allowing this Criminal Revision Case.



2.I have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3.According to the petitioner, way back in the year 2020, the second respondent himself felt that the petitioner may create law and order problem and therefore, a proceeding was initiated against him by the first respondent under Sections 111 and 113 read with Section 117 Cr.P.C. In this regard, on 21.11.2020 a show cause notice was issued by the first respondent as an Executive Magistrate under Sections 111 and 113 of Cr.P.C. against the petitioner, asking him to show cause as to why it should not be ordered to keep peace, to execute a bond for a period of one year.

4.Pursuant to the said show cause notice dated 21.11.2020, the petitioner appeared before the first respondent and thereafter, the first respondent without providing any opportunity, directed the petitioner to execute a bond for Rs.50,000/-.

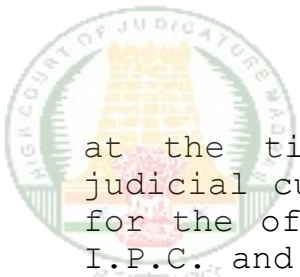
5.In view of the said order, the petitioner executed a probationary bond on 06.03.2021 under Section 117 Cr.P.C. for a period of one year and based on that, he was released. Afterwards, within a period of one year, on 15.03.2021, a case has been registered in Crime No.153 of 2021 against the petitioner under Sections 448, 294(b), 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Subsequent to the registration of the said case, the petitioner was arrested and sent to Nanguneri Borstal School on 15.03.2021. Thereafter, the first respondent has passed an order of conviction, whereby cancelling the probationary bond executed by the petitioner, vide his proceedings dated 30.03.2021 and accordingly, the petitioner has been convicted and sentenced for a period of one year.

6.Challenging the said conviction and sentence, the petitioner is before this Court with this Criminal Revision Case.

7.The first and foremost contention raised by the petitioner's counsel is that, without providing any opportunity to defend the case, the first respondent has passed the order of conviction, which is erroneous in law.

8.Per contra, the learned Additional Public Prosecutor appearing for the respondents Police would contend that the order of conviction passed by the first respondent is well within the procedure contemplated under Chapter VIII of the Code of Criminal Procedure, 1973.

9.Now, on considering the rival submissions made by the learned counsels appearing on either side, it is an admitted fact that while



at the time of convicting the revision petitioner, he was in judicial custody and the same is in respect of Crime No.153 of 2021 for the offences punishable under Sections 448, 294(b) and 506(ii) I.P.C. and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. Therefore, it is apparent that while at the time of passing the impugned order, the petitioner has not been provided with an opportunity to defend the allegation levelled against him. Though the petitioner is having various criminal cases, the same is not the sufficient cause to convict him under Section 122(1)(b) Cr.P.C.

10. At this juncture, it would be relevant to see the order of this Court, dated 13.02.2019, passed in Crl.R.C.No.137 of 2018 etc. batch. While at the time of passing orders in the said Criminal Revision Cases, this Court after referring various judgments, viz.,

(i) 1980 (Supp) Supreme Court Cases 649 - Gopalanachari Vs. State of Kerala;

(ii) CDJ 2016 MHC 4491 - Bala @ Balakrishnan Vs. The Administrative Executive Magistrate-cum-Deputy Commissioner, Trichy City and others;

(iii) CDJ 2016 MHC 4709 - Balamurugan Vs. State, Rep. by the Inspector of Police and another;

(iv) Order in Crl.R.C.No.620 of 2017, dated 13.06.2017 [Victor Vs. State, Rep. by the Inspector of Police, J-11, Kannagi Nagar (L & O) Police Station, Chennai;

(v) CDJ 2017 MHC 4350 - Selvam @ Selvaraj Vs. The Executive Magistrate-cum-Deputy Commissioner of Police (Law & Order, Crime and Traffic), Tiruppur and another;

(vi) CDJ 2017 MHC 5939 - Sathish Kumar Vs. State, Rep. by the Inspector of Police, Tiruchirappalli City and another;

(vii) Order of this Court, dated 31.08.2017 in Crl.R.C.No.1132 of 2017 (Mulla @ Sivakumar Vs. State, Rep. by the Inspector of Police and another);

(viii) CDJ 2017 MHC 7784 - M.Angkumar Vs. The Executive Magistrate-cum-Deputy Commissioner of Police, Law and Order, Madurai and others; and

(ix) AIR 1986 Supreme Court 991 - Suk Das and another Vs. Union Territory of Arunachal Pradesh.

issued various directions to the Executive Magistrate and observed as follows:-

''2. At the enquiry, the Executive Magistrate should furnish the person the materials sought to be relied upon, including statements of witnesses, if any, in the vernacular (if the person is not knowing the language other than his mother tongue).

3. If the person wishes to engage an Advocate to represent him at the enquiry, an opportunity to have a counsel of his choice should be provided to him.

4. The Executive Magistrate shall inform the



person about his right to have the assistance of a lawyer for defending him in the enquiry.

5.The enquiry shall be conducted by the Executive Magistrate on the notified date or such other date as may be fixed and the person should be allowed to participate in the same.

6.At the enquiry, an opportunity should be given to the person to:

(i)Cross-examine the official witnesses, if any and

(ii)produce documents and witnesses, if any, in support of his case.

7.Such Executive Magistrate or his successor in office, should then, apply his mind on the materials available on record, in the enquiry, and pass speaking order.

8.An order u/s.122(1)(b) of Cr.P.C should contain the grounds upon which the Executive Magistrate is satisfied that the person has breached the bond.

9.A copy of the order should be furnished to the person along with the materials produced at the enquiry.

10.The enquiry, as far as possible shall be completed within 30 days and at no circumstance, the enquiry shall be adjourned unnecessarily. The advocates, who appear on behalf of the persons concerned, are expected to co-operate with the enquiry process for its expeditious completion.'''

11.Applying the ratio laid down in the above referred order, here it is a case that when at the time of awarding conviction, the petitioner was in judicial custody. In this regard, there was no denial on the side of the learned Additional Public Prosecutor that before convicting the petitioner, reasonable opportunity was not given to him. Under the constitutional mandate, it is for the first respondent to ensure that if the petitioner is not enough to face trial with full of legal knowledge, he has to be provided with legal assistance by appointing a counsel, who is nominated by the District Legal Services Authority.

12.In this case, no such opportunity was given to the petitioner by appointing a Legal Aid Counsel. Therefore, it is a clear case of violation of instructions already issued by this Court. Further, I am of the considered opinion that the conviction rendered by the first respondent is in respect of conduct of the petitioner and the same is nothing but violative of principles of natural justice and therefore, the said order passed by the first respondent is liable to be set aside. Accordingly, the order of



conviction dated 30.03.2021, passed by the first respondent, is set aside and this Criminal Revision Case is allowed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

To

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

+1 CC to M/s.R.KARUNANIDHI, Advocate (SR-33278[F] dated
29/10/2021)

Crl.R.C. (MD) No.554 of 2021

27.10.2021

MGJ(29.10.2021) 5P 6C