



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.10.2021

CORAM:

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

Crl.R.C. (MD)No.744 of 2021

and

Crl.M.P. (MD)Nos.8553 and 8554 of 2021

Akbar Ali .. Petitioner/Accused

Vs.

1.The II Class Executive Magistrate-cum-
Tahsildar, Dindigul West,
Dindigul. ..1st Respondent/Executive Magistrate

2.The Inspector of Police,
Dindigul West Police Station,
Dindigul. ..2nd Respondent/Complainant

PRAYER: This Criminal Revision Petition is filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to call for records and set aside the order passed by the learned II Class Executive Magistrate-cum-Tahsildar Dindigul in M.C.No.70/2021/A5, dated 23.09.2021 and allow this criminal revision petition.

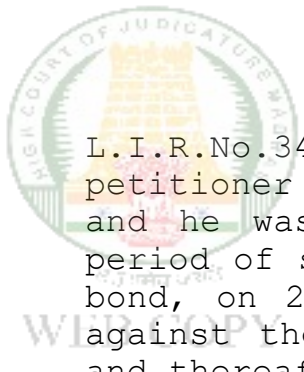
For Petitioner	: Mr.T.Amjadkhan
For Respondents	: Mr.E.Antony Sahaya Prabahar Additional Public Prosecutor

ORDER

The present Criminal Revision Case has been filed praying to call for the records pertaining to the order of conviction dated 23.09.2021, passed by the first respondent / II Class Executive Magistrate-cum-Tahsildar, vide Proceedings in M.C.No.70/2021/A5 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 2010, the second respondent registered a case against him in Crime No.1725 of 2010 for the offences under Sections 147, 148 and 302 I.P.C. and thereafter, the second respondent on assumption that the petitioner will disturb the public, initiated 110(e) Cr.P.C. proceeding in



L.I.R.No.34 of 2021. Pursuant to the said proceedings, the petitioner was appeared before the first respondent on 22.07.2021 and he was directed to execute a bond for good behaviour for a period of six months i.e., upto 25.01.2022. After execution of the bond, on 22.08.2021 a case in Crime No.501 of 2021 was registered against the petitioner under Sections 341, 307 and 506(ii) I.P.C. and thereafter, he was arrested and released on bail. Therefore, on breach of the bond, the first respondent invoked Section 122(1)(b) Cr.P.C. and issued summons to the petitioner to appear before him on 23.09.2021 and on the same day, the first respondent passed the impugned order and sentenced the petitioner to remain in jail for the remaining period of bond executed by him.

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

5.The first and foremost contention raised by the petitioner's counsel is that, without providing any opportunity to produce both oral and documentary evidence, the first respondent has passed the order of conviction in a hurried manner and no details about the cross-examination by the petitioner were stated in the impugned order, which are erroneous in law.

6.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.

7.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 passing the impugned order, the petitioner has not been provided with an opportunity to produce both oral and documentary evidence on his side.

8.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.?"'

9.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 has not been provided with an opportunity to produce both oral and documentary evidence on his side. 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.

10.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 23.09.2021, passed by the first respondent, is set aside and this Criminal Revision Case is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Cs-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The II Class Executive Magistrate-cum-Tahsildar, Dindigul West, Dindigul.

2.The Inspector of Police, Dindigul West Police Station, Dindigul.

3.The Superintendent, Central Prison, Madurai

<https://hcservices.courtsgov.in/hcservices/>



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

+1 CC to M/s.J.IMRAN KHAN, Advocate (SR-32626[F] dated 26/10/2021)

Cr1.R.C.(MD)No.744 of 2021
26.10.2021

KS (CO)
KB/JGB(29.10.2021) 5P 6C