



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.803 of 2021

and

Crl.M.P.(MD)Nos.9326 and 9327 of 2021

WEB COPY

Prasanth

.. 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, (Town West Police Station)

Dindigul.

.. 2nd Respondent/Complainant

Prayer : This Revision Case is filed under Sections 397 r/w. Section 401 of Cr.P.C., to call for the records and set aside the order passed by the Learned Ist Respondent Executive Magistrate in M.C.No.131/2021/A5 dated 21.10.2021 and allow this Criminal Revision Petition.

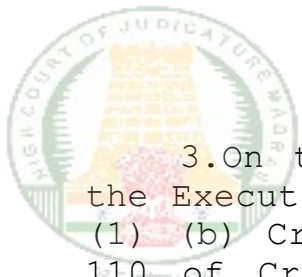
For Petitioner : Mr.J.Imran Khan

For Respondents : Mr.K.Sanjay Gandhi
Government Advocate

ORDER

This Criminal Revision has been filed to set aside the order passed by the first respondent in M.C.No.131/2021/A5, dated 21.10.2021.

2.The second respondent registered a case in L.I.R.No.55 of 2021 under Section 110 (e) Cr.P.C. and referred the matter to the first respondent. After enquiry, the petitioner executed a bond on 28.09.2021 before the first respondent to maintain good behavior for a period of six months. Subsequently, the petitioner involved in an offence in Crime No.585 of 2021 under Section 387 and 506 (ii) of IPC and 25 (1-A) of Arms act. The petitioner was arrested on 12.10.2021. The second respondent informed the same to the first respondent and an enquiry was conducted on 20.10.2021 and the impugned order was passed by the first respondent in M.C.No.131/2021/A5. Against the impugned order, the petitioner has preferred this revision.



3.On the side of the revision petitioner, it is stated that the Executive Magistrate does not have power to invoke Section 122 (1) (b) Cr.P.C. for violation of the bond executed under Section 110 of Cr.P.C and the same is violative of Article 21 of the Constitution of India. It is further stated that the petitioner was not given sufficient opportunity or sufficient time to agitate the enquiry. The petitioner received the summon on 21.10.2021 that is on the date of hearing itself and the first respondent passed the detention order, without conducting an enquiry. No opportunity was given to the petitioner to produce documents. The proceedings was conducted in a hurried manner, without giving sufficient opportunity to the petitioner and prayed the order to be set aside.

4.On the side of the prosecution, it is stated that the bond was executed on 28.09.2021. The petitioner violated the bond conditions by his subsequent involvement in the criminal case. The power of the Executive Magistrate to invoke Section 122 (1) (b) Cr.P.C has to be decided by the Larger Bench and the petitioner is not entitled to raise the point at this juncture.

5.A perusal of the impugned order reveals that the impugned order was passed on the date of enquiry itself. Nothing is mentioned in the impugned order whether copies of the documents were furnished to the petitioner. It is seen that sufficient time was not granted to the petitioner to cross examine the witness. The statement of the petitioner before the first respondent is not mentioned in the impugned order. There is no other previous case against the petitioner. Hence, the impugned order is liable to be set aside.

6.In the above circumstances, the impugned order, dated 21.10.2021, passed by the first respondent in M.C.No.131/2021/A5, is hereby set aside. This Criminal Revision Case is allowed. The petitioner is directed to be released forthwith, unless his presence is required in any other case. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sn/lr



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.

WEB COPY

To

- 1.The II Class Executive Magistrate
Cum Tahsildar, Dindigul West,
Dindigul.
- 2.The Officer incharge,
District Prison,Dindigul.
- 3.The Inspector of Police,
Dindigul West Police Station, (Town West Police Station)
Dindigul.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl. R.C.(MD)No.803 of 2021
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