



Crl.R.C.No.1009 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.1009 of 2020

Rajan

... Petitioner

Vs.

1. The Executive Magistrate and
Deputy Commissioner of Police,
Wannarapet District.

2. The Inspector of Police,
H8, Thiruvotriur Police Station,
Chennai 600 019.

... Respondents

Prayer:Criminal Revision Case filed under Section 397(1) and 401 of Cr.P.C., to call for the entire records in connection with M.P.No.04 of 2020 in R.C.No.344/Sec.Pro/DCP WPT/2019 on the file of the Executive Magistrate and Deputy Commissioner of Police, Wannarapet District and set aside the order passed by the Executive Magistrate and Deputy Commissioner of Police, Wannarapet District, dated 05.10.2020 in M.P.No.04 of 2020 in R.C.No.344/Sec.pro/DCP WPT/2019.



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For Petitioner : Mr.V.Paarthiban

For Respondents : Mr.R.Murthi
Government Advocate, (Criminal Side)

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ORDER

This Criminal Revision Case has been filed against the order dated 05.10.2020 passed in M.P.No.04 of 2020 in R.C.No.344/Sec.pro/DCP WPT/2019 on the file of the Executive Magistrate and Deputy Commissioner of Police, Wannarapet.

2. The learned counsel for the petitioner submitted that the petitioner executed a bond under Section 107 Cr.P.C., on 19.12.2019. Subsequently the petitioner violated the bond and committed offence under Sections 20(1) COPTA Act and 294(b) and 506(ii) IPC on 24.09.2020, for which a case came to be registered in Crime No.5572 of 2020 and he was arrested on the same day. While he was in custody, the first respondent passed an order under Section 122(1)(b) Cr.P.C., against the petitioner for violation of Section 107 Cr.P.C., and detained the petitioner on 05.10.2020. He further



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submitted that the first respondent did not give opportunity to the petitioner to defend his case. Added to it, he was not allowed to get legal assistance.

Without giving opportunity to the petitioner to defend his case, all the witnesses were examined and order also passed on the same day, which is against the principles of natural justice.

3. The learned Government Advocate (Criminal Side) appearing for the respondents would submit that the petitioner is the history sheeter and he was involved in many criminal cases. Since, the petitioner breached the condition imposed in the bond executed under Section 107 Cr.P.C., the second respondent filed a report before the first respondent and after giving opportunity, the first respondent cancelled the bond executed by the petitioner under Section 107 Cr.P.C. During the bond period, the petitioner was involved in another case and therefore, *prima facie* found that the petitioner breached the bond and therefore, the proceedings was initiated under Section 122 (1)(b) Cr.P.C. Therefore, there is no violation of Principles of Natural Justice and there is no merit in the revision.



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4. Admittedly, the petitioner executed a bond under section 107 Cr.P.C., on 19.12.2019 and during the pendency of the pond period, he was involved in the ground case in Crime No.5572 of 2020 for the offence under Sections 20(1) COPTA Act and 294(b) and 506(ii) IPC and he was arrested on 24.09.2020 and remanded to judicial custody While he was in custody, the petitioner was summoned and he was produced before the Executive Magistrate. Thereafter witnesses were examined and the Executive Magistrate passed the impugned order.

5. A careful reading of the order passed by the first respondent shows that the order has been passed while the petitioner was in custody and the petitioner was not given any opportunity either to engage a counsel by himself or through Legal Services Authority.

6. This Court is of the opinion that when an accused is in custody and if any proceedings has to be initiated by any authority, sufficient opportunity should be given to the accused to defend his case by engaging a counsel by himself failing which, the authority or the Court concerned has



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to provide a Legal Aid Counsel through Legal Services Authority. In this case, the said procedure has not been followed by the first respondent which violates the principles of natural justice. Therefore, this Court is inclined to set aside the order passed by the first respondent.

7. In view of the above, the impugned order passed by the first respondent is set aside and the matter is remitted back to the first respondent. The first respondent is directed to initiate a fresh proceedings after giving sufficient opportunity to the petitioner to engage a counsel on his own or the first respondent has to provide a Legal Aid Counsel through the District Legal Services Authority and dispose of the matter in accordance with law.

8. With the above direction, this Criminal Revision case is disposed of.

15.12.2022

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Index:yes/No
Internet:yes/No

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P.VELMURUGAN, J.

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To

1. The Executive Magistrate and
Deputy Commissioner of Police,
Wannarapet District.
2. The Inspector of Police,
H8, Thiruvotriur Police Station,
Chennai 600 019.
3. The Public Prosecutor,
High Court,
Madras.

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