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Crl.R.C.No.1461 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

CORAM:

**THE HON'BLE Mr. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1461 of 2022

and

Crl.M.P.No.16457 of 2022

Vijay @ Sivaji

... Petitioner

Versus

1.The Executive Magistrate-cum-  
Deputy Commissioner of Police,  
St.Thomas Mount District,Chennai – 16.

2.State rep.by  
The Inspector of Police (Law and Order),  
S-8, Adambakkam Police Station,  
Chennai – 88.

... Respondents

Criminal Revision Case filed under Sections 397 r/w 401 of Criminal Procedure Code to set aside the order in M.P.No.24 of 2022 in Na.Ka.No.53/Nir.Se.Nadu/Ka.Thu.Aa.Pu.Tho.Ma/2022 vide an order dated 07.09.2022 on the file of the first respondent and to allow the above Criminal Revision Case.

For Petitioner : Mr.S.N.Arunkumar

For Respondents : Mr.S.Sugendran  
Additional Public Prosecutor



**ORDER**

This Criminal Revision Case has been filed against the order dated 07.09.2022 passed in M.P.No.24 of 2022 in Na.Ka.No.53/ Nir.Se.Nadu/Ka. Thu.Aa.Pu.Tho.Ma/2022 by the first respondent.

2.The case of the prosecution is that on 28.01.2022 at 11.00 a.m the second respondent/Police was on patrolling and on seeing the second respondent the petitioner tried to escape. He was intercepted and enquired by the police and the petitioner admitted his involvement in Crime No.773 of 2020 for the offences under Sections 147, 148, 149, 294(b), 323, 324, 448 and 506(ii) IPC and registered a case against the petitioner in S.No.11/S8.Sec.Pro/2022 under Section 110 Cr.P.C on 10.02.2022. Thereafter, the petitioner executed a bail bond under Section 110 Cr.P.C. to keep good behaviour for a period of one year. During the said bond period, based on the complaint given by one Ajithkumar, the second respondent police registered a case in Crime No.394 of 2022 for the offences under Sections 341, 294(b), 323 and 506(ii) IPC against the petitioner and he was arrested and remanded to judicial custody on 02.09.2022. While, the petitioner was in custody, on Prisoner's Transit Warrant, he was produced before the first respondent on 05.09.2022 and copies of the case were furnished to the petitioner. Thereafter,



he was again produced on 07.09.2022 and three witnesses on the side of the prosecution were examined. After due enquiry, the first respondent initiated proceedings under Section 122 (1) (b) of Cr.P.C and cancelled the bail bond executed under Section 110 Cr.P.C and directed the petitioner to undergo 165 days imprisonment. Challenging the said impugned order, the petitioner is before this Court.

3.The learned counsel for the petitioner submitted that since the petitioner is in prison, he was not able to appoint a counsel on his own choice, however, the counsel, who appeared on behalf of the petitioner, appointed by the respondent had not conducted the proceedings in an effective manner, which would prejudice the petitioner. Even in paragraph No.7 of the impugned order it is clearly mentioned that the witnesses were not cross examined by the defence counsel.

4. Heard the learned counsel on either side and also perused the materials available on record.

5. Considering the facts and circumstances and on a perusal of the impugned order dated 07.09.2022, this Court finds that the defence counsel has not cross examined the witnesses. Therefore, in order to give an opportunity to the petitioner to cross examine the witnesses, the impugned order dated



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07.09.2022 passed by the first respondent/Executive Magistrate-cum-Deputy Commissioner of Police, Chennai is hereby set aside and the matter is remitted back to the first respondent for fresh consideration. The petitioner is permitted to appoint a counsel on his own choice and he shall appear before the first respondent on **16.11.2022 at 10.00 a.m.** Further, the learned counsel for the petitioner is directed to cross examine all the witnesses on that day itself in the presence of the petitioner, failing which, the impugned order dated 07.09.2022, stands good and this order shall automatically cancelled without any further reference to the Court. In case the petitioner's counsel cross examined the witnesses on that day, the first respondent is directed to dispose of the matter on merits and in accordance with law.

6. With the above directions, this Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

**03.11.2022**

Index : Yes/No  
Speaking Order/Non Speaking Order  
ms



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To

- 1.The Executive Magistrate-cum-  
Deputy Commissioner of Police,  
St.Thomas Mount District,  
Chennai – 16.
- 2.The Inspector of Police (Law and Order),  
S-8, Adambakkam Police Station,  
Chennai – 88.
- 3.The Public Prosecutor,  
High Court, Madras.
- 4.The Superintendent,  
Central Prison,  
Puzhal, Chennai.



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**P.VELMURUGAN, J.**

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