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Crl.R.C.No.1397 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.1397 of 2018

Vinodkumar @ Vinod

...Petitioner

-Vs-

1.The Executive Magistrate and
The Deputy Commissioner of Police,
T.Nagar,
Chennai – 17.

2.The Inspector of Police (Law & Order),
R7, K.K.Nagar Police Station,
Chennai – 78.

... Respondents

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to set aside the order in Crl.M.P.No.1 of 2018 dated 16.11.2018 in Na.Ka.No.201/Nir.Se.Nadu.Ka.Thu.Aa/ Thi.Ma.Va/2018 by the Executive Magistrate and Deputy Commissioner of Police, T-Nagar, Chennai.

For Petitioner : Mr.G.Mohana Krishnan

For Respondents : Mr.A.Gopinath
Government Advocate (Crl. Side)



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ORDER

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This revision has been filed against the order passed in CrI.M.P.No.1 of 2018 dated 16.11.2018 in Na.Ka.No.201/Nir.Se.Nadu.Ka.Thu.Aa/Thi.Ma.Va/2018 on the file of the Executive Magistrate and Deputy Commissioner of Police, T.Nagar, Chennai.

2. The petitioner executed a bond under Section 110 of Cr.P.C, on 27.07.2018 for a period of one year. Again, on 07.11.2018, he was involved in another case registered in Crime No.729 of 2018 for the offences punishable under Sections 294(b), 394 and 506(ii) IPC, on the file of the second respondent herein. In pursuant to the FIR, he was arrested and remanded to judicial custody. After remand, the second respondent requested the first respondent to initiate the proceedings under Section 122(1)(b) of Cr.P.C for violation of the condition imposed on execution of bond under Section 110 of Cr.P.C. Immediately, on 16.11.2018, impugned order was passed and it was ordered to detain the petitioner to serve the remaining bond period.

3. Admittedly, the petitioner was not given any opportunity to put forth his explanation to initiate the proceedings under Section 122(1)(b) of Cr.P.C. On his appearance on 12.11.2018, he was directed to appear on 16.11.2018.



Thereafter, the impugned order was passed by the first respondent on

16.11.2018.

4. In this regard, it is relevant to rely upon the provision under Section 122 of Cr.P.C and the same reads as follows:-

“122. Imprisonment in default of security.— (1)

(a) If any person ordered to give security under section 106 or section 117 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(b) If any person after having executed a [bond, with or without sureties] without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other



punishment or forfeiture to which the said person may be liable in accordance with law.”

The first respondent cannot invoke the provision under Section 122 of Cr.P.C if the petitioner violated the bond under Section 110 of Cr.P.C.

5. It is relevant to see the judgment of this Court in the case of ***P.Sathish @ Sathish Kumar Vs. State represented by Inspector of Police*** reported in ***2019 (2) MWN (cr.) 136***, in which, this Court has held as follows:-

“1.Notice to be sent to the person by the Executive Magistrate to show cause as to why action under Section 122(1)(b) of Cr.P.C should not be taken for breach of the bond executed under Section 117 Cr.P.C on a date fixed.

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 under Section 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.”

The above legal principles as evolved have to be followed by all the Executive Magistrates concerned.



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6. Further, in the case of ***Devi Vs. The Executive Magistrate and one another in Crl.R.C.No.78 of 2020, dated 25.09.2020***, this Court has held as follows:-

“36.Unlike the expression “breach of the peace”, where “subjectivity” is the basis, good behaviour rests on “objectivity”. All the clauses of Section 110 Cr.P.C., except clause (g), underpin the existence of a previous case. In fact, they use the expression “habit / habitual” which is conspicuously missing in clause (g). Such a requirement is not there under Section 107 Cr.P.C. Section 110(e) Cr.P.C. which contemplates offences committed habitually involving breach of the peace cannot be used as a window to enter into Section 122(1)(b) Cr.P.C., for the simple reason that, Section 122 (1) (b) Cr.P.C. is predicated on the nature of the bond, viz., bond for breach of the peace and not on clause (e) of Section 110 Cr.P.C. Thus, textually and contextually, a bond for good behaviour can, by no stretch of imagination, be telescoped into Section 122(1)(b) Cr.P.C.

37. In Anoop Singh Vs. State of Punjab, a learned Single judge of the Punjab and Haryana High Court has held that imprisonment under Section 122(1)(b) Cr.P.C., was not contemplated for the breach of a good behaviour bond under Section 110 Cr.P.C.



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38. *There is yet another reason as to why the Parliament did not include breach of a good behaviour bond in Section 122(1)(b) Cr.P.C., Section 120 Cr.P.C., states what amounts to breach of a bond. It states that commission or attempt to commit or the abetment of any offence punishable with imprisonment, would amount to breach of a bond for good behaviour. This means that the person will have to face a regular trial in a criminal Court for the act which gave rise to the breach of the bond for good behaviour. If a good behaviour bond is included in Section 122(1)(b) Cr.P.C., there is every likelihood of the person being imprisoned twice, viz., one for breach of the bond and the other for the commission or the attempt to commit the substantive offence. Supposing such a person is imprisoned for the breach of bond, but is acquitted for the criminal act which gave rise to the breach of bond, the imprisonment suffered by him cannot be compensated. That is why, the Legislature had thought it fit to mulct a person who commits breach of good behaviour bond only with civil liability, viz., forfeiture of the bond amount and not imprisonment.”*

In the aforesaid judgment, this Court has held that the bond for good behavior can by no stretch of imagination be telescoped into Section 122(1) (b) of Cr.P.C.

7. Therefore, the first respondent has no jurisdiction to invoke the



provisions under Section 122(1)(b) of Cr.P.C, when the petitioner had executed a bond under Section 110 of Cr.P.C.

8. It is relevant to extract the provisions under Section 110 of Cr.P.C., which as follows,

110. Security for good behaviour from habitual offenders
When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

(a) is by habit a robber, house-breaker, thief, or forger, or
(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment of disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the Commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the Commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely:—



- (a) *the Drugs and Cosmetics Act, 1940 (23 of 1940);*
- (b) *the Foreign Exchange Regulation Act, 1973 (46 of 1973);*
- (c) *the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952);*
- (d) *the Prevention of Food Adulteration Act, 1954 (37 of 1954);*
- (e) *the Essential Commodities Act, 1955 (10 of 1955);*
- (f) *the Untouchability (Offences) Act, 1955 (22 of 1955);*
- (g) *the Customs Act, 1962 (52 of 1962); or*
- (ii) *any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or*
- (g) *is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit*

Comments

The Court must have specific facts and satisfied that counter petitioner is sure to commit offences mentioned if he is not kept in custody; Gopalalnchari v State of Kerala, 1981 SCCr R 338



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9. Thus, it is clear that if the petitioner had executed a bond under Section 110 Cr.P.C, then the first respondent has got jurisdiction to invoke the bar under Section 122(1)(b) of Cr.P.C for violation of bond. Therefore, the order passed in CrI.M.P.No.1 of 2018 dated 16.11.2018 in Na.Ka.No.201/Nir.Se.Nadu.Ka.Thu.Aa/ Thi.Ma.Va/2018 on the file of the Executive Magistrate and Deputy Commissioner of Police, T-Nagar, Chennai, is hereby set aside.

10. Accordingly, this Criminal Revision case stands allowed.

08.11.2022

Index : Yes/No
Speaking/Non Speaking order
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To

1. The Executive Magistrate cum Deputy Commissioner,
Chennai.
- 2.The Inspector of Police (Law & Order),
R7, K.K.Nagar Police Station,
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