



Crl.RC.No.1419 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

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

Crl.RC.No.1419 of 2018

Dineshkumar

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Petitioner

Versus

1.The Executive Magistrate cum
Deputy Commissioner of Police,
Madhavaram,
Chennai City Police

2.State: Inspector of Police,
Law and Order,
M-5, Ennore Police Station,
Chennai 600 057

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Respondents

PRAYER:

Criminal Revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure to set aside and revise the order dated 22.11.2018 passed by the first respondent in RC.No.195/Sec.Pro/DCP MVM/2018 on the file of the Executive Magistrate cum Deputy Commissioner of Police.



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For Petitioner : Mr.S.Vellidoss
For Respondents : Mr.A.Gopinath,
Government Advocate(crl.side)

ORDER

This criminal revision is directed as against the order dated 22.11.2018 passed by the first respondent in RC.No.195/Sec.Pro/DCP MVM/2018, thereby detained the petitioner for the remaining bond period.

2. The petitioner was arrested and remanded to judicial custody in pursuant to his involvement in crime No.52 of 2018. In pursuant to the registration of FIR, he was directed to execute bond for a period of one year under Section 110 Cr.P.C. Accordingly, he executed bond for a period of one year under Section 110 of Cr.P.C. on 20.10.2018. While pending the said bond period, he again involved in crime No.948 of 2018 registered for the offences under Sections 341, 294(b), 323, 324, 448, 506(ii) of IPC r/w Section 3 of TNPPDL Act on 09.11.2018. In pursuant to the registration of FIR, again he was arrested and remanded to judicial custody. Since the petitioner involved in another case while pending bond period, he was issued



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show cause notice to initiate proceedings under Section 122(1)(b) of Cr.P.C.

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3. On 19.11.2018, when he was produced before the Executive Magistrate on PT warrant, he was given opportunity to submit his explanation for the show cause notice and he was directed to submit his explanation on 22.11.2018. On 22.11.2018, he was produced and he did not engage any advocate. After examination of the prosecution witnesses, the first respondent detained him for the remaining bond period by the impugned order dated 22.11.2018 itself.

4. Heard, the learned counsel for the petitioner and the learned Government Advocate(crl.side) appearing for the respondents.

5. Admittedly, the first respondent initiated proceedings under Section 122(1)(b) of Cr.P.C. It is relevant to extract the provisions under Section 122(1)(b) of Cr.P.C. hereunder:

122. Imprisonment in default of security.—

(1) (b) If any person after having executed a [bond,



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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.”

Thus, it is clear that if any person having been executed bond for keeping peace in pursuance of an order under Section 117 of Cr.P.C. and violated the condition till the expiry of bond period, the first respondent can very well initiate proceedings under Section 122(1)(b) of Cr.P.C. on the strength of the report from the police personnel concerned.

6. In the case on hand, admittedly the petitioner executed bond under Section 110 of Cr.P.C as security for his good behaviour for a period of one year. Therefore, the first respondent has no jurisdiction to initiate proceedings under Section 122(1)(b) of Cr.P.C. when the accused executed



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bond under Section 110 Cr.P.C. In this regard, it is relevant to reply upon the judgment in the case of ***Devi Vs. The Executive Magistrate and one another in Crl.R.C.No.78 of 2020, dated 25.09.2020***, wherein 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.

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.”

7. In view of the above, this criminal revision is allowed and the



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order dated 22.11.2018 passed by the first respondent in
RC.No.195/Sec.Pro/DCP MVM/2018 is set aside.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order
lok

G.K.ILANTHIRAIYAN. J,



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To

- 1.The Executive Magistrate cum
Deputy Commissioner of Police,
Madhavaram,
Chennai City Police
- 2.Inspector of Police,
Law and Order,
M-5, Ennore Police Station,
Chennai 600 057
- 3.The Public Prosecutor,
High Court of Madras

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