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Crl.RC.No.1528 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.1528 of 2018

Jayaseelan

... Petitioner

Versus

1.The Executive Magistrate cum
Deputy Commissioner of Police,
Washermenpet.

2.State: Inspector of Police(crime),
N2, Kasimedu Police Station,
Chennai 600 013

... 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 10.09.2018 passed by the first respondent in MP.No.1 of 2018 in RC.No.62/Sec.Pro/DCP WPT/2018.

For Petitioner : Mr.D.Gopi Krishnan

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

ORDER

This criminal revision is directed as against the order dated 10.09.2018 passed by the first respondent in MP.No.1 of 2018 in



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RC.No.62/Sec.Pro/DCP WPT/2018.

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2. The petitioner had earlier involved in cases in Cr.No.1327 of 2017 and 1348 of 2017 on the file of the second respondent. Thereafter, on suspicion of committing crime, to take action under Section 109 of Cr.P.C., it was registered in Sl.No.13 of 2018 on the file of the second respondent and he was released. Thereafter on summon dated 06.08.2018, before the first respondent, the petitioner executed bond for a period of one year under Section 109 of Cr.P.C. on 06.08.2018. While pending the said bond period, he again involved in crime No.394 of 2018 registered for the offences under Section 380 of IPC.

3. On 07.09.2018, 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 10.09.2018. On 10.09.2018, 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 10.09.2018 itself.



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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, 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.”



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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 109 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 bond under Section 109 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



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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 food 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 brach of the bond



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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 order dated 10.09.2018 passed by the first respondent in MP.No.1 of 2018 in RC.No.62/Sec.Pro/DCP WPT/2018 is set aside.

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Internet: Yes
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Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,

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To

- 1.The Executive Magistrate cum
Deputy Commissioner of Police,
Washermenpet.
- 2.Inspector of Police(crime),
N2, Kasimedu Police Station,
Chennai 600 013
- 3.The Public Prosecutor,
High Court of Madras

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