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Crl.R.C.No.1522 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.1522 of 2018

Dinesh

...Petitioner

-Vs-

State Rep. by
The Inspector of Police,
S-9, Pazavarthangal Police Station,
Chennai- 61.

...Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to call for the records on the file of the Executive Magistrate cum Deputy Commissioner of Police, St.Thomas Mount Range, Chennai, in Crl.M.P.No.988 of 2018 in Na.Ka.En.15/Nir.Sa.Ndu.Ka.Dhu/St.Thomas Mount dated 06.12.2018 and set aside the order dated 16.11.2018.

For Petitioner : Mr.Duraikannan

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

ORDER

This revision has been filed against the order dated 16.11.2018 passed in Crl.M.P.No.988 of 2018 in Na.Ka.En/Nir.Sa.Ndu.Ka.Dhu/ St. Thomas Mount



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dated 06.12.2018 on the file of the Executive Magistrate cum Deputy Commissioner of Police, St.Thomas Mount Range, Chennai, thereby detaining the petitioner for the remaining bond period.

2. The petitioner was arrested on 15.11.2018 for the offence under Sections 341, 294(b), 336, 397 and 506(i) IPC in Crime No.1029 of 2018 and thereafter, he was directed to execute a bond with two sureties for his good behavior for a period of six months. Accordingly, the petitioner executed a bond under Section 117 Cr.P.C with two sureties on 24.09.2018.

3. Pending the bond period, again the petitioner involved in another case which was registered in Crime No.483 of 2018 for the offence under Sections 341, 294(b), 323 and 506(ii) IPC and Section 4 of TNPWH Act, 2002. Pursuant to registration of FIR, the petitioner was arrested and remanded to judicial custody on 04.12.2018 and it was informed to the Executive Magistrate to detain him for the remaining bond period, which was executed by him.

4. On receipt of the same, the petitioner was directed to be produced on 06.12.2018 under PT warrant. Accordingly, he was produced before the Executive Magistrate and was served with show cause notice on 06.12.2018.



The Executive Magistrate conducted an enquiry and passed an order under Section 122(1)(b) Cr.P.C., thereby detaining the petitioner for the remaining bond period.

5. Admittedly, the petitioner executed a bond under Section 117 Cr.P.C. The only consideration is that when the petitioner executed bond under Section 117 Cr.P.C., for any violation, the Executive Magistrate can initiate proceedings under Section 122(1)(b) Cr.P.C.

6. In this regard, it is relevant to rely upon 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



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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.”

Therefore, it is clear that any violation of bond executed under Section 117 Cr.P.C., would not attract any action under Section 122(1)(b) Cr.P.C.

7. That apart, in the case on hand the petitioner was produced under PT warrant before the Executive Magistrate on 06.12.2018 and on the same day he was served with show cause notice. However, the petitioner was not given any opportunity to put forth his defense and he was not given any opportunity to engage an advocate to represent on his behalf. Therefore, it is a clear case of violation of principles of natural justice. On both the grounds, the impugned order passed by the Executive Magistrate, cannot be sustained as against the petitioner and it is liable to be set aside.

8. In view of the above, the order dated 16.11.2018 passed in



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M.P.No.988 of 2018 in Na.Ka.En.15/Nir.Sa.Ndu.Ka.Dhu/St. Thomas Mount,
on the file of the Executive Magistrate cum Deputy Commissioner of Police,
St.Thomas Mount range, Chennai, is hereby set aside.

9. Accordingly, the 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 of Police,
St.Thomas Mount Range, Chennai,
- 2.The Inspector of Police,
S-9, Pazavarthangal Police Station,
Chennai- 61.

G.K.ILANTHIRAIYAN. J.



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