



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2022

CORAM:

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

Crl.R.C(MD)No.120 of 2022

AND

CRL MP (MD)No.2174 of 2022

WEB COPY

Jalaludeen

(Now confined at

Central Prison, Madurai)

...Revision Petitioner

Vs.

1.The Executive Magistrate-cum-
The Deputy Commissioner of Police,
South, Madurai City.

2.The Inspector of Police,
B1 Vilakkuthoon Police Station (Law & Order),
Madurai City. ...Respondents

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records in M.C.No.473/நி.செ.ந. & கா.து.ஆ/ம.மா/2021, dated 23.11.2021, on the file of the Executive Magistrate-cum-Deputy Commissioner of Police, South, Madurai City, revise the proceedings and set aside the same.

For Petitioner : Mr.D.S.Haroon Rasheed

For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

This Criminal Revision Case is directed against the proceedings of the first respondent, dated 23.11.2021 in M.C.No.473/நி.செ.ந. & கா.து.ஆ/ம.மா/2021, thereby detained the petitioner for the remaining bond period of five months till 22.04.2022 under Section 122(1)(b) r/w 117 Cr.P.C.

2. The first respondent initiated proceedings as against the petitioner under Section 110, 111, 117 r/w 113 Cr.P.C., based on the report submitted by the second respondent in L.I.R.No.14 of 2021, alleging that there is an apprehension that the petitioner is likely to commit public breach. On receipt of the same, the first respondent issued the show cause notice under Section 111 Cr.P.C., in M.C.No.473/2011, dated 22.04.2021 call upon the petitioner why not the revision petitioner execute a personal bond for Rs.1,00,000/- (Rupees One Lakh only) with two sureties each for a period of one year. On 23.04.2021 enquiry was conducted and ordered to execute the bond for a period of one year.

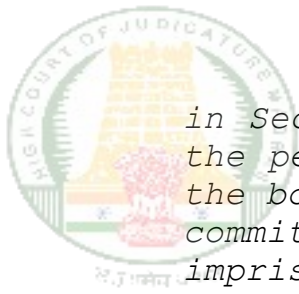


3. Accordingly, the petitioner executed a bond for a period of one year. Thereafter, the second respondent registered another case as against the petitioner in Cr.No.644 of 2021 for the offences under Sections 341, 323, 324, 506(ii) IPC and Section 4 of TNPWH Act alleging that during Deepavali festival by blocking the complainant's shop the revision petitioner doing as a street vendor in the platform. Due to which, some quarrel arose between the petitioner and the defacto complainant, as a result, a case was registered. In pursuant to the complaint, the petitioner was arrested and remanded to judicial custody on the same day ie., on 13.11.2021.

4. On perusal of the impugned order, it seen that the same was passed without application of mind. It is also seen that no explanation is called, for the violation of the terms of the bond executed by the petitioner and no hearing of opportunity was given to the petitioner before cancelling the bond executed by him. Though the petitioner was given an opportunity of cross-examined the witnesses produced by the second respondent, he did not engage any counsel on behalf of him and no cross-examination was made from the witnesses produced by the second respondent. Further, the petitioner did not produce any witness or document and no explanation was given by him. He was produced before the first respondent for the judicial custody and as such there was no possibility for him to put-forth his defence before the first respondent. Therefore, no one shall be deprived on his life or personal liberty except according to procedure established by law. The first respondent has passed the detention order that the petitioner was directed to undergo the detention for the bond period till 22.04.2022. 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 Hon'ble Court held as follows:

"37. In Anoop SinghVs. 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 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."

5. Therefore, the first respondent without affording an opportunity to the petitioner and without hearing the petitioner's plea and merely based on the recommendation of the second respondent, that too, without any proof of breach, has passed the impugned order and as such, it has not legs to stand further and it is liable to be set aside.

6. In view of the above, the proceedings in M.C.No.473/நி.செ.ந. & கா.து.ஆ/ம.மா/2021, dated 23.11.2021 passed by the Executive Magistrate-cum-Deputy Commissioner of Police, South, Madurai City is set aside and the Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

16/02/2022

Sub Assistant Registrar(CS)

Am

To

1.The Executive Magistrate-cum-

The Deputy Commissioner of Police,South, Madurai City.

2.The Inspector of Police,

B1 Vilakkuthoon Police Station (Law & Order), Madurai City.

3. The Superintendent, Central Prison, Madurai.

4.The Additional Public Prosecutor

Madurai Bench of Madras High Court, Madurai.

Crl.R.C (MD) No.120 of 2022

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