



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl. R.C.(MD)No.96 of 2022
and
Crl.M.P.(MD)No.1720 of 2022

M.Thavaeshwaran

... Petitioner /Respondent

Vs.

1.The Executive Magistrate No.II/
The Thasildar,
Uthamapalayam, Theni District.

2.The Sate rep by
The Inspector of Police,
Chinnamanur Police Station,
Chinnamanur, Theni District.

3.The Superintendent of Prison,
District Prison,
Dindigul, Dindigul District.

...Respondents/Respondents

Prayer : This Revision Case is filed under Sections 397 r/w. Section 401 of Cr.P.C., to call for the records and set aside the judgment dated 18.12.2021 made in Na.Ka.No.10589/2021/A8 on the file of the learned Executive Magistrate No.II/Thasildar. Uthamapalayam and allow the above revision.

For Petitioner : Mr.C.Jeganathan

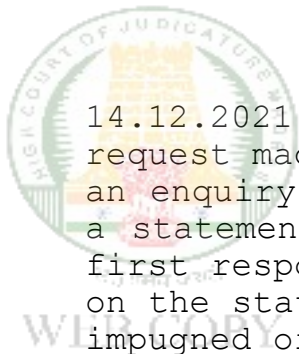
For Respondents : Mr.S.Manikandan

Government Advocate(Crl.Side)

ORDER

This revision has been filed to set aside the judgment dated 18.12.2021 made in Na.Ka.No.10589/2021/A8 on the file of the learned Executive Magistrate No.II/Thasildar. Uthamapalayam.

2. The learned counsel for the petitioner would submit that based on the report submitted by the second respondent, the proceedings were initiated under Section 110 Cr.P.C. by the first respondent on 08.10.2021. Accordingly, the petitioner had executed a bond for maintaining good conduct for a period of one year. The petition against the petitioner was registered in Crime No.1283 of 2021 for the offence under Section 294(b), 323, and 506 (ii) on



14.12.2021 on the file of the second respondent. Based on the request made by the second respondent, the petitioner was called for an enquiry on 15.12.2021 and on 16.12.2021 the petitioner had given a statement before the second respondent. Based on the report, the first respondent without giving opportunity to the petitioner. Based on the statement by the petitioner before the second respondent, the impugned order was passed by committing the petitioner under Section 122 (1) (b) of Cr.P.C. The petitioner is not furnished with any documents and no legal assistance was provided to the petitioner. Only on the basis of involvement in the subsequent Crime number, the impugned order was passed. Therefore, the first respondent have failed to mention his decision regarding the necessity for passing this order.

3. Per contra, the learned counsel for the respondents submitted that the petitioner involved in two cases. He involved in Crime No.1283 of 2021 for the offence under Section 294(b), 323, 506 (ii) IPC on the file of the second respondent herein. He further submitted that given an opportunity of hearing and conducted full fledged trial and impugned order was passed.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. The first respondent passed the impugned order thereby ordered the petitioner to be imprisoned for 196 days under Section 122(1)(b) of Cr.P.C. It is relevant to read the Section 122(1)(b) of Cr.P.C. 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, the 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 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.

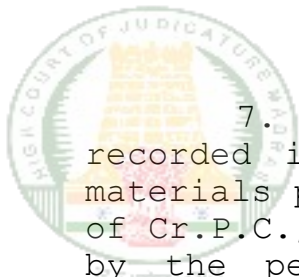
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(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, and after giving the concerned person a reasonable opportunity of being heard, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years."

The first respondent has powers to take preventive measures to prevent the persons from indulging any criminal activities in order to keep the peace and public tranquility. Under Section 122(3) of Cr.P.C. the Executive Magistrate may direct the persons to execute bond up to three years, when they breach the condition, without passing detention order under Section 122 (1) (b) of Cr.P.C.

6. On perusal of the records would show that after registration of FIR in Crime No.1283 of 2021 on the file of the second respondent, the petitioner was arrested and remanded to Judicial custody. Thereafter, the report from the second respondent, the first respondent issue summon to the petitioner on 15.12.2021 to 16.12.2021. On receipt of the same, the petitioner was appeared before the second respondent on 18.12.2021. Though the impugned order stated that the petitioner was given an opportunity to engage a person appear on behalf of him, no sufficient opportunity was given to the petitioner to engage his counsel since on the date of appearance itself the order was passed namely, 18.12.2021. Therefore, the first respondent failed to give any opportunity to the petitioner to putforth this case. Except this statement recorded by the first respondent. That apart no witness were examined except the first respondent to conclude that the bond executed by him.



7. More over the satisfaction of the Magistrate has to be recorded in the impugned order and it should be based upon the materials produced by the police officers. As per the Section 122(3) of Cr.P.C., the first respondent before cancelling the bond executed by the petitioner, he shall be satisfied that the person has breached the bond conditions and he must also record the satisfaction for proof. Before passing the order, he must apply his mind and pass orders and it could not be passed mechanically. Further the detention order must disclose the grounds of proof and satisfaction of the Magistrate and it has to be recorded in the impugned order and the said satisfaction should be based on the materials which was produced by the police officer concerned as well as the contra materials if any, that could be produced by the person, whom against the proceeding has sought to be invoked.

8. The perusal of impugned order would show that the first respondent passed the said order without application of mind. It is also seen that no explanation is called, for the violation of the terms of the bound from the petitioner and no hearing opportunity was given to the petitioner before cancelling the bond executed by him. It is the violation of Article 21 of Constitution of India. No one shall be deprived of his life or personal liberty except according to procedure established by law. As such, this Court finds that the impugned order is vitiated and it is liable to be set aside.

9. In fine, the impugned order passed by the first respondent in Na.Ka.No.10589/2021/A8, dated 18.12.2021 is set aside and the Criminal Revision Case is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSIII)

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/ /2022

Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

- 1.The Executive Magistrate No.II
cum Tahsildar, Uthamapalayam,
Theni District.
- 2.The Inspector of Police,
Chinnamanur Police Station,
Chinnamanur, Theni District.
- 3.The Superintendent of Prison,
District Prison,
Dindigul, Dindigul District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO
The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.JEGANATHAN, Advocate (SR-4829[F] dated 08/02/2022)

ORDER MADE IN
Crl. R.C. (MD)No.96 of 2022
07.02.2022

PKP/12.03.2022/5P/7C