



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2022

CORAM:

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

CrI.R.C(MD).No.115 of 2022
and CrI.M.P(MD).2095 of 2022

M.Gurusamy

... Petitioner/Respondent

Vs

1.Sub Divisional Executive Magistrate-Cum-
Revenue Divisional Officer,
Aruppukkottai,
Virudhunagar District.

...1st Respondent

2.The Sub-Inspector of Police,
Amathur Police Station,
Virudhunagar District.

... 2nd Respondent / Petitioner

3.The Superintendent of Prison,
The District Jail,
Virudhunagar.

... 3rd Respondent

PRAYER: Criminal Revision case filed under Article 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the order dated 27.12.2021 in M.C.No.321 of 2021 on the file of the first respondent, set aside the same.

For Petitioner : Mr.M.Musthafakhan

For Respondents : Mr.K.Sanjai Gandhi
Government Advocate(CrI.Side)

O R D E R

This petition has been filed to set aside the proceedings passed in M.C.No.321 of 2021, dated 27.12.2021, on the file of the first respondent.

2.The second respondent registered LIR No.8 of 2021 under Section 110(e) of Cr.P.C and produced before the first respondent for initiation of proceedings. On enquiry, the petitioner was directed to execute the bond for a sum of Rs.25,000/- for a period of one year and if violated any of the conditions in the bond, he is liable to be prosecuted under Section 122 (1)(b) of Cr.P.C. After execution of the bond by the petitioner, the petitioner involved in the case registered in Crime No.216 of 2021 registered for offence under Sections 4(a), 5 of Explosive Substances Act r/w 120 (b) IPC



on the file of the second respondent. On the requisition of the second respondent, the first respondent issued notice to the petitioner to conduct enquiry. After enquiry, the first respondent passed the order under Section 122(1)(b) of Cr.P.C. Against that order, the petitioner preferred this revision petition.

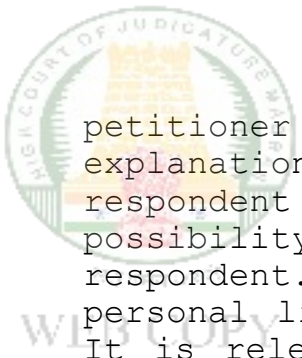
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3.The learned counsel for the petitioner would submit that the impugned order is consequential to an order to execute a bond for good behavior under Section 110 (e) and 117 of Cr.P.C which by itself is illegal, vague, arbitrary and against the law and principles of natural justice. The impugned order passed without conducting enquiry and without giving an opportunity of hearing to the petitioner and without giving an opportunity to cross examine the witnesses. He would further submit that the proceedings initiated to execute the bond for good behavior, upon which the impugned order is passed, was conducted in a hasty manner, wherein summons was served, enquiry conducted, order passed and the bond was executed all on the same day namely 18.10.2021. Therefore, the petitioner was deprived of his right to participate in the impugned proceedings. He further submit that the first respondent has not even applied his judicial mind to ascertain whether the petitioner is habitual in committing or attempts to commit or abets the commission of any offence involving breach of peace before initiating proceedings under Section 110 (e) of the Cr.P.C. The first respondent has failed to consider that the petitioner did fall within the purview of the definition of the habitual offender as emphasized under Section 2 (4) of Tamil Nadu Restriction of Habitual offenders Act, 1948 before initiating the proceedings under Section 110 Cr.P.C.

4.The learned Government Advocate submitted that on 18.10.2021, the petitioner executed a bond under Section 110 of Cr.P.C. but he has violated the bond conditions and subsequently, a case was registered in Crime No.216 of 2021. Only after conducting proper enquiry, the impugned order was passed by the first respondent. The petitioner is also having a previous case and prayed that the petition to be dismissed.

5.Heard the learned counsel appearing on either side and perused the records.

6.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. It is relevant to see the judgment of this Court in the case of **P.Sathish @ Sathish Kumar Vs. State represented by Inspector of Police**, reported in **2019 (2) MWN (cr.) 136**, in which, this Court has held as follows:-

1. Notice to be sent to the person by the Executive Magistrate to show cause as to why action under Section 122(1)(b) of Cr.P.C should not be taken for breach of the bond executed under Section 117 Cr.P.C on a date fixed.
2. At the enquiry, the Executive Magistrate should furnish the person the materials sought to be relied upon, including statements of witnesses, if any, in the vernacular (if the person is not knowing the language other than his mother tongue).
3. If the person wishes to engage an Advocate to represent him at the enquiry, an opportunity to have a counsel of his choice should be provided to him.
4. The Executive Magistrate shall inform the person about his right to have the assistance of a lawyer for defending him in the enquiry.
5. The enquiry shall be conducted by the Executive Magistrate on the notified date or such other date as may be fixed and the person should be allowed to participate in the same.
6. At the enquiry, an opportunity should be given to the person to:
 - (i) Cross-examine the official witnesses, if any and
 - (ii) produce documents and witnesses, if any, in support of his case.
7. Such Executive Magistrate or his successor in office, should then, apply his mind on the materials available on record, in the enquiry, and pass speaking order.
8. An order under Section 122(1)(b) of Cr.P.C should contain the grounds upon which the Executive Magistrate is satisfied that the person has breached the bond.
9. A copy of the order should be furnished to the person along with the materials produced at the enquiry.



10. The enquiry, as far as possible shall be completed within 30 days and at no circumstance, the enquiry shall be adjourned unnecessarily. The advocates, who appear on behalf of the persons concerned, are expected to co-operate with the enquiry process for its expeditious completion."

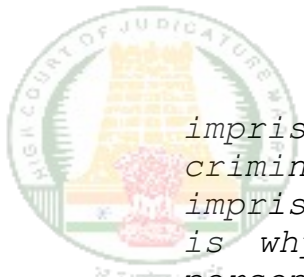
The above legal principles as evolved have to be followed by all the Executive Magistrates concerned.

7. 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 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."

In the aforesaid judgment, this Court has held that the bond for good behavior can by no stretch of imagination be telescoped into Section 122(1) (b) of Cr.P.C.

8. In view of the above referred judgments, the first respondent failed to follow the procedure as enumerated by this Court and as such the impugned order cannot be sustained as against the petitioner. Accordingly, this criminal revision case is allowed and the proceedings in M.C.No.321 of 2021, dated 27.12.2021 passed by the first respondent is set aside and the petitioner is directed to be released forthwith, unless his presence is required in any other case. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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16/02/2022

Sub Assistant Registrar(CS)

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To

1. Sub Divisional Executive Magistrate-Cum-
Revenue Divisional Officer,
Aruppukkottai, Virudhunagar District.

2. The Sub-Inspector of Police,
Amathur Police Station,
Virudhunagar District.

3. The Officer Incharge,
The District Jail, Virudhunagar.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.MUSTHAFAKHAN, Advocate (SR-5291[F] dated
10/02/2022)

CrI.R.C(MD).No.115 of 2022

09.02.2022

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