



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2022

CORAM:

THE HONOURABLE Mr. JUSTICE G.K. ILANTHIRAIYAN

Crl.R.C(MD).No.110 of 2022

WEB COPY

Pradeep Kumar

... Petitioner/Respondent
Vs

1.The Sub Divisional Administrative Magistrate Cum
The Sub Collector, Sivakasi,
Virudhunagar District.

... 1st Respondent/
Executive Magistrate

2.The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District
(LIR No.45 of 2021)

... 2nd Respondent / Complainant

3.The Superintendent,
Central Prison,
Madurai.

... 3rd Respondent/Respondent

PRAYER: Criminal Revision case filed under Article 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the order of the first respondent by his proceedings in M.C.No.505 of 2021 dated 24.01.2022 and set aside the same as illegal and allow the above criminal revision petition as prayed for.

For Petitioner : Mr.M.Jegadeesh Pandian

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

O R D E R

This petition has been filed to set aside the proceedings passed in M.C.No.505 of 2021, dated 24.01.2022, on the file of the first respondent.

2.The second respondent registered a case in LIR No.45 of 2021 under Section 110 of Cr.P.C on 08.11.2021 and produced the report under the capacity of the complainant before the first respondent and requested to take action under Section 110 of Cr.P.C and based on the report submitted by the second respondent, first respondent initiated the proceedings under Section 110 of Cr.P.C as against the petitioner. The petitioner was directed to be produced before the first respondent on 30.11.2021. Thereafter, he was directed to execute the bond under Section 110 of Cr.P.C. Accordingly, the petitioner executed a bond for a sum of Rs.1 lakh for a period of

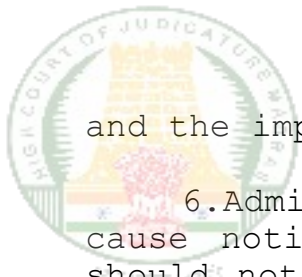


one year. While being so, the second respondent again registered a case as against the petitioner on 14.12.2021 on the allegation that the petitioner was found in possession of ganja, in Crime No.573 of 2021 for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act. Thereafter, the petitioner was arrested on 14.12.2021 and remanded to judicial custody. When it was brought to the knowledge of the first respondent, immediately he directed the second respondent to produce the petitioner before him on 04.01.2022 and 13.01.2022. Thereafter, the first respondent cancelled the bond executed by the petitioner and passed the impugned order under Section 122(1)(b) of Cr.P.C and directed the petitioner to be under the custody till 18.07.2022. Against that order, the petitioner preferred this revision petition.

3.The leaned counsel for the petitioner would submit that the petitioner was not given an opportunity to engage the lawyer to defend the proceedings initiated by the first respondent. The petitioner has right to engage the lawyer, which is guaranteed under the Constitution of India. As per Article 21 of the Constitution of India, during any proceedings, enquiry or trial, the affected party must be provided with legal assistance and if the affected party is not able to engage a lawyer of his choice, due to poverty, it is the role of the Presiding Officer to appoint the legal aid counsel to defend the affected party in order to prove that the parties have dealt with all the opportunities guaranteed under law. He would further submit that no opportunity was given for cross examination of the witnesses and the enquiry was not conducted in the proper manner. The copies were not furnished to the petitioner.

4.The learned Government Advocate(crl.side) would submit that the petitioner is a habitual offender and he sofar involved four previous cases arising out of NDPS Act. He repeatedly involved similar kind of offences and therefore, he violated the bond executed under Section 110 of Cr.P.C and therefore, the first respondent conducted enquiry. In fact, the petitioner was given an opportunity to engage the counsel for which the petitioner refused to engage advocate and after giving an opportunity of hearing to the petitioner, orders were passed.

5.On a perusal of the order impugned in this revision revealed that the first respondent failed to give an opportunity of cross examination of the witnesses to the petitioner. The petitioner was arrested and remanded to the judicial custody in pursuant to the FIR registered in Crime No. 573 of 2021 on the file of the second respondent for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act on 14.12.2021. On request made by the first respondent, the petitioner was produced before the first respondent on 10.01.2022 and on 13.01.2022. On 13.01.2022, at the request made by the petitioner to engage the legal aid counsel, it was adjourned to 20.01.2022. Further, the petitioner refused to engage the counsel



and the impugned order was passed.

6. Admittedly, the first respondent failed to issue any show cause notice 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 110 of Cr.P.C. Further if the person wishes to engage the Advocate to represent him at the enquiry, an opportunity to have a counsel of his choice should be provided to him, whereas, in the case on hand though the petitioner sought for assistance of advocate, he was not given an opportunity of engaging his counsel to defend him. Further, the impugned order is silent about whether the opportunity was given to the petitioner to cross examine the witness. The contention of the petitioner was not at all discussed by the first respondent in the impugned order and no opportunity was given to the petitioner to put forth his case. In the above circumstances, the impugned order is liable to be set aside.

7. In view of the this criminal Revision case is allowed and the proceedings in M.C.No.505 of 2021, dated 24.01.2022, passed by the first respondent is set aside. The petitioner is directed to be released forthwith, unless his presence is required in any other case.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

16/02/2022

Sub Assistant Registrar(CS)

cp

To

1. The Sub Divisional Administrative Magistrate Cum
The Sub Collector, Sivakasi,
Virudhunagar District.

2. The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District.

3. The Superintendent,
Central Prison, Madurai.

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

CrI.R.C(MD) .No.110 of 2022

09.02.2022

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