



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.163 of 2022

and

Crl.M.P(MD)No.2682 of 2022

R.Vivek @ Vivekanandhan

... Petitioner/Petitioner

Vs.

1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Pudukkottai.

2.The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai District.

... Respondents/Complainants

PRAYER: Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records of the first respondent in Cr.P.C case No.125 of 2021 dated 26.11.2021 and set aside the same.

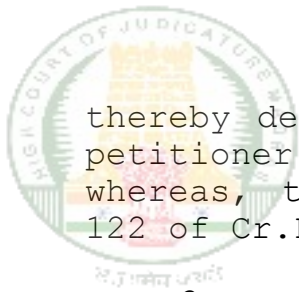
For Petitioner : Mr.G.Mathavan

For Respondents : Ms.M.Aasha
Government Advocate (Criminal Side)

ORDER

This revision has been filed as against the order passed by the first respondent in Cr.P.C case No.125 of 2021 dated 26.11.2021 and set aside the same.

2.The petitioner executed a bond under Section 110 of Cr.P.C for a period of one year on 30.09.2021. Thereafter, the petitioner involved in another crime No.799 of 2021 for the offences under Sections 294(b), 386 and 506(ii) of I.P.C and 7 r/w 25 (1-A) of Arms Act, 1959 on the file of the second respondent. In pursuant to the said crime, the petitioner was arrested and remanded to judicial custody. It was intimated to the first respondent and on receipt of the same, the first respondent issued show cause notice for the enquiry to be conducted on 09.11.2021. On the enquiry, the second respondent examined two witnesses and passed the impugned order



thereby detained the petitioner for the remaining bond period. The petitioner originally executed the bond under Section 110 of Cr.P.C whereas, the first respondent initiated proceedings under Section 122 of Cr.P.C.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. It is relevant to rely upon the provision under Section 122 of Cr.P.C and the same reads 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, he 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, with or without sureties] 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."

The first respondent cannot invoke the provision under Section 122 of Cr.P.C if the petitioner violated the bond under Section 110 of Cr.P.C.

5. 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 proved, 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.

6.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 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."

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.



7. 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 Cr.P.C case No.125 of 2021 dated 26.11.2021 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(AD-I)

// True Copy //

/ /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 Sub Divisional Magistrate cum
Revenue Divisional Officer,
Pudukkottai.
2. The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

Order made in
Cr1.R.C (MD) No.163 of 2022
31.03.2022

SRR(CO)
TR(05.04.2022) 5P 6C