



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**
Crl.R.C. (MD)No.271 of 2022

A.Rajadurai

... Petitioner

Vs.

1. The Sub Divisional Magistrate/
The Revenue Divisional Officer
Kovilpatti, Thoothukudi District
2. The State rep. by Inspector of Police
Kovilpatti East Police Station
Kovilpatti
Thoothukudi District
3. The Superintendent of Prison
Central Prison
Palayamkottai
Tirunelveli District

..Respondents

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the impugned order passed in Na.Ka.A1/4857/2021 on the file of the Revenue Divisional Officer (Sub Divisional Magistrate), Kovilpatti, Thoothukudi Dt. 16.08.2021 set aside the same and allow this petition.

For Petitioner : Mr.R.J.Karthick
For Respondent : M/s.Aasha
Government Advocate (Criminal Side)

O R D E R

This Revision has been filed to call for the records relating to the impugned order passed in Na.Ka.A1/4857/2021 on the file of the Revenue Divisional Officer (Sub Divisional Magistrate), Kovilpatti, Thoothukudi Dt. 16.08.2021 set aside the same and allow this petition.

2. The petitioner executed bond under Section 110 of Cr.P.C on the file of the first respondent for a period of one year on 06.07.2021. While pending bond period again the petitioner involved and committed offence in Crime No. 899 of 2021 for the offences



under Sections 294(b), 307 and 506(ii) of IPC on 08.08.2021. In pursuant to the said crime, the second respondent arrested the petitioner and remanded to judicial custody and the same has been informed to the first respondent to initiate action under Section 122(1)(b) of Cr.P.C. However the petitioner was not served with any show cause notice and he was given an opportunity of hearing and he was not at all enquire and without issuance any show cause notice the impugned order came to be passed that too without conducting any enquiry. It is relevant to extract Section 122(1)(b) of Cr.P.C:

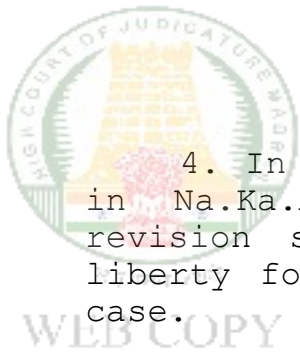
122. Imprisonment in default of security

(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 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

(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

3. Accordingly the first respondent ought to have issued show cause notice and conducted enquiry. On perusal of the impugned order there is no iota of evidence to show that the first respondent issued show cause notice and conducted enquiry as contemplated under Section 122(1)(b) of Cr.P.C. It is clear abuse of process of law and also violation of principle of natural justice. On this sole ground alone the impugned order cannot be sustained and it liable to set aside as against the petitioner.



4. In view of the above, the order passed by the 1st respondent in Na.Ka.A1/4857/2021 dated 16.08.2021 is hereby set aside and the revision stands allowed. The petitioner is directed to set at liberty forthwith, if his presence is not required in any other case.

Sd/-

Assistant Registrar(AS)

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/ /2022

Sub Assistant Registrar(CS)

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To:-

1. The Sub Divisional Magistrate/
The Revenue Divisional Officer
Kovilpatti, Thoothukudi District
2. The Inspector of Police
Kovilpatti East Police Station
Kovilpatti
Thoothukudi District
3. The Superintendent of Prison
Central Prison
Palayamkottai
Tirunelveli District
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-13065[F] dated 18/03/2022)

Crl.R.C. (MD) No.271 of 2022

18.03.2022

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KMV(CO)

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