



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.262 of 2022

Diwahar

... Petitioner

Vs.

1.The Second Class Executive Magistrate
Cum Thasildar, Kamudhi Taluk, Kamudhi,
Ramanathapuram District.

2.The Inspector of Police,
Kamudhi Police Station,
Ramanathapuram District.

... Respondents

Prayer: This Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C., to call for the records relating to the impugned order passed by the 1st respondent in M.C.No.1 of 2021 dated 30.11.2021 and set aside the same as illegal and allow the criminal revision case.

For Petitioner : Mr.T.Veerakumar

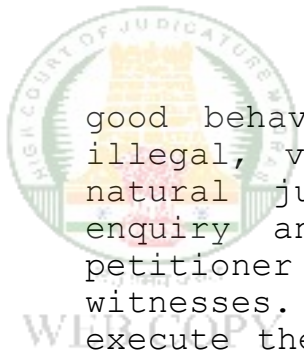
For Respondents : Mrs.Aasha,
Government Advocate (Crl. Side)

O R D E R

This criminal revision case has been filed challenging the order passed by the first respondent in M.C.No.1 of 2021 dated 30.11.2021, thereby directed the jail authorities to detain the petitioner till the completion of the bond period.

2.The petitioner executed a bond on 22.04.2021 for a sum of Rs.50,000/- 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.727 of 2021 registered for offence under Sections 147, 148, 294(b), 341 and 302 of IPC @ 147, 148, 294(b), 341 and 302 of IPC r/w. Section 120 (b) of 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.

3.The learned counsel for the petitioner would submit that the impugned order is consequential to an order to execute a bond for



good behaviour under Section 110 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 behaviour, 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 30.11.2021. 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 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 22.04.2021, 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.727 of 2021. Only after conducting proper enquiry, the impugned order was passed by the first respondent.

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

6.On a perusal of the records, it is seen that the petitioner executed a bond on 22.04.2021 for a sum of Rs.50,000/- 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. During the pendency of the bond period, the petitioner involved in the case and the same was registered in Crime No.727 of 2021 for the offence under Sections 147, 148, 294(b), 341 and 302 of IPC @ 147, 148, 294 (b), 341 and 302 of IPC r/w. Section 120(b) of IPC on the file of the second respondent. The same was informed by the second respondent to the first respondent. Therefore, the first respondent issued show cause notice dated 26.11.2021 calling upon the petitioner to appear for enquiry on 30.11.2021. 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.1 of 2021, dated 30.11.2021, 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(AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

- 1.The Second Class Executive Magistrate
Cum Thasildar,
Office of the Second Class Executive Magistrate
Cum Thasildar,
Kamuthi Taluk,
Ramanathapuram District.
- 2.The Judicial Magistrate, Kamuthi,
- 3.The Chief Judicial Magistrate,
Ramanathapuram.
- 4.The Inspector of Police,
Kamuthi Police Station,
Ramanathapuram District.
- 5.The Superintendent of Prison,
Central prison,
Madurai District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.VEERAKUMAR, Advocate (SR-12568[F] dated 16/03/2022)
Crl.R.C. (MD)No.262 of 2022
16.03.2022

tp(CO)

TR(17.03.2022) 3P 8C

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