



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.330 of 2022

Manikandan ... Petitioner/Respondent

Vs.

- 1.The II-Class Administrative Magistrate Cum
Tahsildhar, Dindigul East,
Dindigul District. ...1st Respondent/Executive Magistrate
- 2.The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.
(LIR No.36 of 2022) ... 2nd Respondent / Complainant
- 3.The Superintendent,
District Jail,
Theni. ...3rd Respondent/Respondent

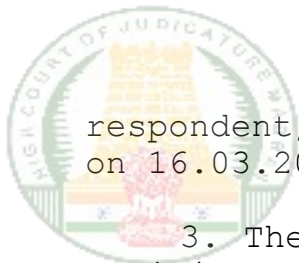
Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the order of the 1st respondent by his proceedings in Na.Ka.No.07/2022/A3 dated 16.03.2022 and set aside the same as illegal and allow the above Criminal Revision Petition.

For Petitioner : Mr.M.Jegadeesh Pandian
For Respondent : M/s.Aasha
Government Advocate (Criminal Side)

ORDER

This Criminal Revision has been filed to call for the records relating to the order of the 1st respondent by his proceedings in Na.Ka.No.07/2022/A3 dated 16.03.2022 and set aside the same as illegal and allow the above Criminal Revision Petition.

2. The petitioner already executed bond under Section 110 of Cr.P.C in LIR No.36 of 2022 on 11.02.2022 before the first respondent. Thereafter he involved in another offence in Crime No.128 of 2022 registered for the offences under Sections 8(c) r/w.20(b)(ii)(B), 29(1) of NDPS Act on 10.03.2022. In pursuance to the said crime he was arrested and remanded to judicial custody and the same has been intimated by the second respondent to the first respondent. The first respondent initiated proceedings under Section 122(1)(b) of Cr.P.C. On receipt of intimation from the first



respondent, the petitioner was produced before the first respondent on 16.03.2022.

3. The learned counsel for the petitioner would submit that the petitioner was not served with any show cause notice and on the same day on 16.03.2022, the impugned order came to be passed, thereby the petitioner was detained for the remaining period till 13.08.2022. That apart the petitioner was not given any opportunity of hearing and to engage a counsel to appear on behalf of him

4. 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.

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

6. On a 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-examining 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.

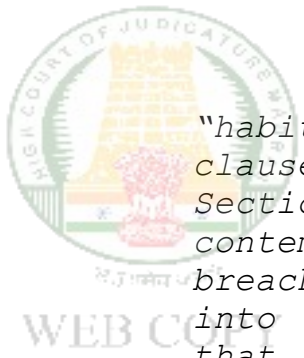
9.A copy of the order should be furnished to the person along with the materials produced at the enquiry.

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 CrI.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 Na.Ka.No.07/2022/A3 dated 16.03.2022 passed by



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the first respondent is set aside and the petitioner is directed to be released forthwith, unless his presence is required in any other case.

Sd/-

Assistant Registrar(CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To:-

- 1.The II-Class Administrative Magistrate Cum
Tahsildhar, Dindigul East,
Dindigul District.
- 2.The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.
- 3.The Officer Incharge,
District Jail,
Theni.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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