



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.287 of 2021

Gopi @ Gopinath Durga

... Petitioner

Vs.

1.The Sub-Divisional Executive Magistrate cum
The Revenue Divisional Officer,
Palani.

2.State by,
The Inspector of Police,
Palani Town Police Station,
Palani,
Dindigul District.

... Respondents

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records of the first respondent in M.C.38/2018/A7, dated 20.01.2021 and set aside the same.

For Petitioner

: Mr.M.Karunanithi

For Respondents

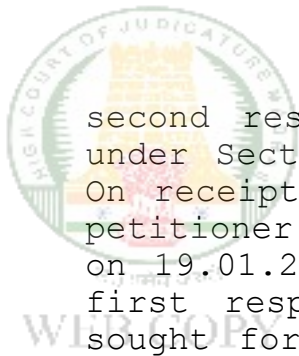
: Ms.M.Aasha

Government Advocate (Crl. Side)

ORDER

This revision has been filed as against the order passed in M.C.38/2018/A7, dated 20.01.2021, on the file of the first respondent, thereby detained the petitioner for the remaining bond period.

2.The petitioner involved in a case in Crime No.398 of 2018 registered for the offences under Sections 147, 148, 447 and 302 of I.P.C. In order not to indulge in future crimes, he was directed to execute bond under Section 110 of Cr.P.C. Accordingly, the petitioner was directed to appear on 25.10.2018 as to why the petitioner should not execute the bond to maintain peace and tranquility. Accordingly, he appeared and enquiry was conducted as contemplated under Section 116 of Cr.P.C. Thereafter, under Section 112 of Cr.P.C, the order was passed and directed to execute the bond. Accordingly, the petitioner executed the bond for a period of three years. While pending the bond period, the petitioner again involved in Crime No.1523 of 2020 on the file of the second respondent registered for the offences under Sections 147, 365, 323 and 364(A) of I.P.C. In pursuant to the crime, he was arrested and remanded to judicial custody on 08.01.2020. It was informed by the



second respondent before the first respondent to initiate action under Section 122(1)(b) of Cr.P.C for violation of bond condition. On receipt of the same, the first respondent issued notice to the petitioner on 18.01.2021 to appear for the enquiry to be conducted on 19.01.2021. Accordingly, the petitioner was produced before the first respondent for enquiry on 19.01.2021. On the enquiry, he sought for an opportunity to examine the Government witnesses and permission to engage counsel to putforth his case. However, the first respondent on the very next day ie., on 20.01.2021, without giving an opportunity of hearing to the petitioner and without giving an opportunity to engage the counsel on his behalf, passed the impugned order.

3. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondents and perused the materials available on record.

4. In this regard, it is relevant to rely upon the Judgment of this Court reported in **2019 (2) MLJ (Criminal) 556 - P.Sathish @ Sathish Kumar Vs. State, represented By The Inspector of Police, Law and Order, Chennai and Another** and this Court issued specific directions to follow the legal principles which reads as follows:-

"a. 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.

b. 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).

c. 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.

d. The Executive Magistrate shall inform the person about his right to have the assistance of a lawyer for defending him in the enquiry.

e. 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.

f. 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.

WEB COPY

g. 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.

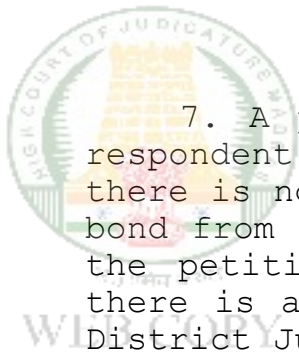
h. An order under Section 122(1)(b) of Cr.P.C should contain the grounds upon which the Executive Magistrate is satisfied that the person has breached the bond.

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

j. 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."

5.The above legal principles as evolved to be followed by all the Executive Magistrate concerned as directed by this Court. However, as stated above, no opportunity of hearing to the petitioner and no opportunity to engage the counsel to appear on his behalf were given to the petitioner and it amounts to clear violation of principles of natural justice.

6.Moreover the satisfaction of the Magistrate has to be recorded in the impugned order and it should be based upon the materials produced by the police officers. As per the Section 122(3) of Cr.P.C., the first respondent before cancelling the bond executed by the petitioner, he shall be satisfied that the person has breached the bond conditions and he must also record the satisfaction for proof. Before passing the order, he must apply his mind and pass orders and it could not be passed mechanically. Further the detention order must disclose the grounds of proof and satisfaction of the Magistrate and it has to be recorded in the impugned order and the said satisfaction should be based on the materials which was produced by the police officer concerned as well as the contra materials if any, that could be produced by the person, whom against the proceeding has sought to be invoked.



7. A perusal of the impugned order would show that the first respondent passed the impugned order without application of mind and there is no explanation called for the violation of the terms of the bond from the petitioner and no opportunity of hearing was given to the petitioner. That apart, the impugned order further says that there is an appeal remedy and the petitioner can appeal before the District Judge and the District Collector within a period of 30 days as against the order passed under Section 122(1)(b) of Cr.P.C. It is completely without application of mind and it is nothing but cut and paste from other orders. Therefore, it shows that the first respondent passed the impugned order without application of mind and as such, it cannot be sustained as against the petitioner and it is liable to be set aside.

8. Accordingly, the impugned order passed in M.C.38/2018/A7, dated 20.01.2021, on the file of the first respondent is set aside and this Criminal Revision Case is allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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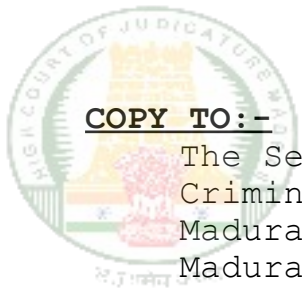
Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Sub-Divisional Executive Magistrate cum
The Revenue Divisional Officer,
Palani.

2.The Inspector of Police,
Palani Town Police Station,
Palani,
Dindigul District.

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



COPY TO:-

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

WEB COPY

+1 CC to M/s.M.KARUNANITHI, Advocate (SR-11318[F] dated 10/03/2022)
Order made in

Cr1.R.C (MD) No.287 of 2021
10.03.2022

CK (CO)

GC (24.03.2022) 5P 7C