



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2022

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C. (MD)No.338 of 2022

WEB COPY

Sheik Mujaideen

... Petitioner/Respondent

Vs

1. The Executive Magistrate/
Deputy Commissioner of Police (South)
(Law and Order),
Madurai City.

2. The Inspector of Police,
B1, Vilakkuthoon Police Station,
Madurai.
(In Crime No.502/2021)

... Respondents/Complainants

Prayer: Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to call for the entire records pertaining to the order and conviction dated 28/1/2022 passed by R1/Executive Magistrate Cum Deputy Commissioner of Police vide proceedings in MC No.573/Ne.Se.Na and Ka.Thu.Aa/Ma.Maa/2021 and to set aside the same as illegal and to allow this Criminal Revision.

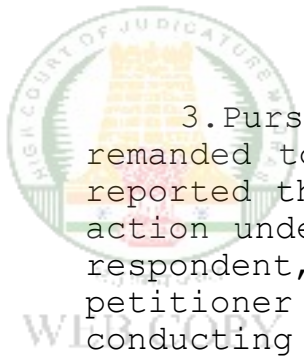
For Petitioner : Mr.R.Karunanidhi

For Respondent : Mr.M.Aasha
Government Advocate (Criminal Side)
for R1 & R2

O R D E R

This Criminal Revision Case has been filed to quash the entire records pertaining to the order and conviction dated 28.01.2022, passed by R1/Executive Magistrate Cum Deputy Commissioner of Police, vide proceedings in MC No.573/Ne.Se.Na and Ka.Thu.Aa/Ma.Maa/2021, thereby, detained the petitioner for further bond period.

2.The second respondent has initiated proceedings in LIR No.19 of 2021, under Section 110(e) Cr.P.C., as against the petitioner on 25.06.2021, for a period of one year. Therefore, the petitioner executed bond for a sum of Rs.1,00,000/- in M.C.No. 573/2021, on the file of the first respondent. While pending the bond period he involved in another case in Cr.No.502 of 2021, registered for the offences punishable under Sections 392 r/w 397, 506(ii) IPC.



3.Pursuant to the said FIR, the petitioner was arrested and remanded to judicial custody on 02.01.2022. The second respondent reported the same to the first respondent and requested to initiate action under Sections 120, 122(1)(b) Cr.P.C. Accordingly the first respondent, issued show cause notice to the petitioner and the petitioner was produced before the first respondent. After conducting enquiry, the petitioner was detained under Section 122(1)(b) r/w 177 Cr.P.C., for the remaining bond period.

4.Admittedly, the petitioner executed bond under 110Cr.P.C., on 25.06.2021 in M.C.No.573 of 2021. Perusal of the impugned order, shows that no explanation is called for, for the violation of the terms of the bond executed by the petitioner and no opportunity of hearing was given to the petitioner before cancelling the bond executed by him. The petitioner did not engage any counsel on behalf of him and the petitioner was not given an opportunity for cross-examining the witnesses **2 to 5**, produced by the second respondent. Further, the petitioner did not produce any witness or document and no explanation was given by him, since, he was produced before the first respondent for judicial custody, there was no possibility for him to put-forth his defence, before the first respondent. Therefore, no one shall be deprived of his right or personal liberty except according to procedure established by law. It is relevant to refer 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



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.

5. 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 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.

6. 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 MC No.573/Ne.Se.Na and Ka.Thu.Aa/Ma.Maa/2021, dated 28.01.2022 passed by the first respondent is hereby set aside and the petitioner is directed to be released forthwith, unless his presence is required in any other case.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PNM

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 Executive Magistrate/
Deputy Commissioner of Police (South)
(Law and Order),
Madurai City.

2. The Inspector of Police,
B1, Vilakkuthoon Police Station,
Madurai.

3. The Superintendent,
Central Jail, Madurai.

4. 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.

+1 CC to M/s.R.KARUNANIDHI, Advocate (SR-16425[F] dated
04/04/2022)

Cr1.R.C. (MD) No. 338 of 2022

04.04.2022

RK(18/04/2022) 5P 8C