



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2022

CORAM:

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

Cr1.R.C. (MD)No.361 of 2022

and

Cr1.M.P(MD)No.4615 of 2022

Esakkipandi @ Karthik

... Petitioner/ Petitioner

Vs.

1.The II Class Executive Magistrate
cum the Tahsildar,
Cheranmahadevi Taluk,
Tirunelveli District.

2.The Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.

3.The Superintendent of Prison,
Central Prison,
Palayankottai,
Tirunelveli District.

...Respondents /Respondents

Prayer: This Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to call for the records and set aside the impugned order passed by the first respondent in Na.Ka.A.4/378/2022, dated 31.01.2022 and allow this criminal revision.

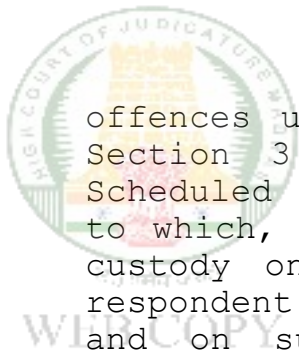
For Petitioner : Mr.C.Saravanakumar

For Respondents : Mrs.Aasha
Government Advocate (Criminal Side)

ORDER

The criminal revision petition has been filed seeking to set aside the order passed by the first respondent in Na.Ka.A4/378/2022, dated 31.01.2022.

2.The second respondent had initiated proceedings in LIR.No.37 of 2021 under Section 110 of Cr.P.C as against the petitioner on 18.11.2021. Accordingly, the petitioner had executed a bond for a period of one year for keeping good faith before the first respondent till 17.11.2022. However, the petitioner involved in another case in Crime No.10 of 2022, registered for the offence under Sections 341, 294(b), 427, 307 and 506(ii) of IPC. Again, he involved in another case in Crime No.11 of 2022, registered for the



offences under Sections 294(b), 427, 307 and 506(ii) of IPC and Section 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. In pursuant to which, the petitioner was arrested and remanded to the judicial custody on 15.01.2022. The same was communicated to the first respondent to initiate proceedings under Section 122(1)(b) of Cr.P.C and on summon, the petitioner was produced before the first respondent on 31.01.2022. On the day itself, without giving opportunity of hearing and without even conducting any enquiry, the impugned order was passed, thereby, detained the petitioner for the remaining bond period, which was executed by the petitioner till 17.11.2022.

3. On perusal of the impugned order revealed that the petitioner was produced before the first respondent on 31.01.2022, on the day of which, the impugned order was passed that too without giving any opportunity of hearing to the petitioner. That apart, the petitioner was not served any show cause notice and he was not given opportunity to explain his side. That apart, the petitioner had executed a bond under Section 110 of Cr.P.C for keeping good faith.

4. It is relevant to rely upon the judgment of this Court 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."

5. In view of the above, the impugned order passed in Na.Ka.A.4/378/2022, dated 31.01.2022, cannot be sustained as against the petitioner and the same is set aside. Accordingly, the criminal revision petition is allowed. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (T&P)

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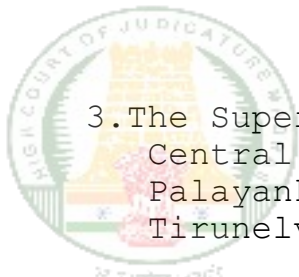
Sub Assistant Registrar(CS)

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To

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cum the Tahsildar,
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Tirunelveli District.

2. The Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.



3.The Superintendent of Prison,
Central Prison,
Palayankottai,
Tirunelveli District.

4.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

Crl.R.C. (MD) No.361 of 2022

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