



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.377 of 2022

and

Crl.M.P(MD)No.4905 of 2022

Akbar Ali

...Petitioner/Petitioner

Vs.

State Rep. by

1.The II Class Executive Magistrate Cum

Tahsildar,
Dindigul East,
Dindigul.

2.The Sub Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.

...Respondents/Respondents

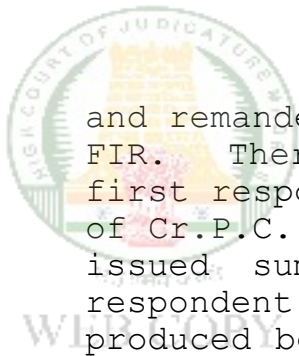
Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order passed by the first respondent in Na.Ka.No...../2021/A1, dated 11.01.2022 and allow this Criminal Revision Petition.

For Petitioner	: Mr.J.Imran Khan
For Respondents	: Ms.M.Aasha
	Government Advocate (Crl.side)

ORDER.

The Criminal Revision Case has been filed to set aside the order passed by the first respondent in Na.Ka.No...../2021/A1, dated 11.01.2022, thereby detained the petitioner for the remaining bond period executed by the petitioner.

2.The petitioner was directed to execute a bond under Section 110 (e) of Cr.P.C. for the reason that the second respondent police registered a case as against the petitioner and initiated proceedings in L.I.R.No.07 of 2022. In pursuant to the said proceedings, the petitioner was produced before the first respondent on 09.01.2022 and he executed a bond for Rs.50,000/- for a period of six months. Again on the very same the second respondent registered another case against the petitioner in Cr.No.15 of 2022 for the offences under Sections 387 and 506 (ii) of IPC and he was arrested



and remanded to judicial custody, in pursuant to the registration of FIR. Thereafter, the second respondent informed the same to the first respondent to initiate the proceedings under Section 122(1) (B) of Cr.P.C. On receipt of the said request, the first respondent has issued summons to the petitioner to appear before the first respondent on 11.01.2022. On 11.01.2022, the petitioner was produced before the first respondent and his statement was recorded and passed impugned order, thereby detained the petitioner for remaining period of bond executed by the petitioner on 09.01.2022.

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

4.Admittedly, the first respondent has failed to issue show cause notice to the petitioner and without giving any opportunity of hearing and also not given any opportunity of cross examining the witnesses before passing impugned order. It amounts to clear violation of principles of natural justice and as such impugned order is not sustainable as against the petitioner. That apart, when the petitioner executed a bond under Section 110(e) of Cr.P.C., the first respondent cannot initiate the proceedings under Section 122 (1) (B) of Cr.P.C. 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.

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 Na.Ka.No...../2021/A1, dated 11.01.2022 passed by the first respondent is set aside and the petitioner is directed to be released forthwith, unless his presence is required in any other case. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

To

1. The II Class Executive Magistrate Cum
Tahsildar,
Dindigul East,
Dindigul.



2.The Sub Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.

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

Copy to:

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

Crl.R.C(MD)No.377 of 2022
and
Crl.M.P(MD)No.4905 of 2022
19.04.2021

MGJ(02.05.2022) 5P 6C