



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.393 of 2022

and

Crl.M.P(MD)No.5072 of 2022

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Durkairaj

... Petitioner/Petitioner

Vs.

1.The Sub Divisional Magistrate Cum
The Revenue Divisional Officer,
Pazhani,
Dindigul District.

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

... Respondents/Respondents

PRAYER: Criminal Revision Case filed under Section 397 and 401 Cr.P.C., to call for the records relating to the order passed in M.C.No.18/2020/A7, dated 31.03.2022 on the file of the first respondent and set aside the same.

For Petitioner : Mr.M.Karunanithi

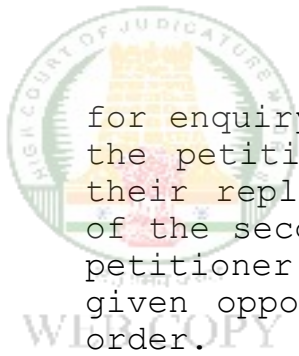
For Respondents : Mrs.M.Aasha

Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is filed to set aside the order passed in M.C.No.18/2020/A7, dated 31.03.2022, on the file of the first respondent and thereby, detain the petitioner for remaining bond period.

2. The petitioner executed a bond under Section 110 Cr.P.C for a period of two years on 17.08.2020. After execution of the bond, the petitioner involved in another case registered in Crime No.335 of 2021 registered for the offence under Section 25(i)(a) of Arms Act. After his arrest, he was released on bail. Again the petitioner involved in Crime No.29 of 2022 registered for the offence under Sections 294(b) and 506(ii) IPC. In pursuant to the said crime, he was arrested and remanded to judicial custody. The same was intimated to the first respondent by second respondent. On receipt of the same, the first respondent vitiated proceedings under Section 122(i)(b) Cr.P.C by issuance of show cause notice as contemplated under Criminal Procedure Code to the petitioner. On receipt of the same, the petitioner engaged an Advocate and appeared



for enquiry on 22.03.2022. The counsel who represented on behalf of the petitioner before the first respondent requested time to file their reply. However, the first respondent after recording report of the second respondent passed the impugned order. Admittedly, the petitioner has been given an opportunity of hearing and he was not given opportunity to cross-examine the witnesses and pass impugned order.

3. In this regard, it is also relevant to rely upon the judgment of the this Court reported in **2022 (1) MWN (Cr.)438 - (J.Gopalakannan Vs. Sub-Divisional Executive Magistrate cum Revenue Divisional Officer, Palani and others)** is held as follows:

"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.More over 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.On 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."

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4. That apart, when the petitioner admittedly executed a bond under Section 110 Cr.P.C, the proceedings cannot be initiated under Section 122(i)(b) 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."

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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 food 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 brach 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 impugned order cannot be sustained and it is liable to be set aside. The Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

28/04/2022

Sub Assistant Registrar(CS-II)

mga

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 Magistrate Cum
The Revenue Divisional Officer,
Pazhani,
Dindigul District.

2.The Superintendent,
Central Prison,
Madurai.



3.The Inspector of Police,
Pazhani Town Police Station,
Dindigul District.

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. (2 copies)

+1 CC to M/s.M.KARTHIKEYA VENKITACHALAPATHY, Advocate (SR-20839[F]
dated 25/04/2022)

Crl.R.C. (MD) No.393 of 2022
22.04.2022

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