



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.426 of 2022

Mathan Kumar

... Revision Petitioner/Respondent

Vs.

1.The Second Class Taluk Executive Magistrate
cum Thasildar,
Dindigul (East),
Dindigul,
Dindigul District.

... 1st Respondent/Presiding Officer

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

... 2nd Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the entire records pertaining to the order passed by the first respondent in Na.Ka.No.07/2022/A.3 in M.C.No.49/2022/A.3, dated 20.04.2022 and set aside the same and to release the revision petitioner confined in the District Prison, Dindigul, Dindigul District.

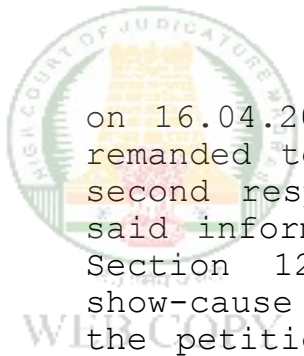
For Petitioner : Mr.S.Sarvagan Prabhu

For Respondents : Ms.M.Aasha
Government Advocate (Criminal Side)

ORDER

This revision has been filed as against the order passed by the first respondent in Na.Ka.No.07/2022/A.3 in M.C.No.49/2022/A.3, dated 20.04.2022, thereby detained the petitioner for the remaining bond period.

2.The petitioner executed a bond under Section 110(e) of Cr.P.C to keep good behaviour for a period of six months for a sum of Rs.50,000/- on 01.04.2022, in pursuant to the involvement in Crime No.152 of 2017 registered for the offences under Sections 387 and 506(ii) of I.P.C. However, he again involved in Crime No.83 of 2022 registered for the offences under Sections 38 and 506(ii) of I.P.C



on 16.04.2022. In pursuant to the said crime, he was arrested and remanded to judicial custody. Immediately, it was informed by the second respondent before the first respondent. On receipt of the said information, the first respondent initiated proceedings under Section 122(1)(B) of Cr.P.C. However without issuance of any show-cause notice and without giving an opportunity of hearing to the petitioner, the impugned order has been passed on 20.04.2022, thereby detained the petitioner for remaining period of the bond executed by the petitioner, dated 01.04.2022.

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. On a perusal of the impugned order revealed that admittedly the petitioner was not served with any show-cause notice and he was not heard before passing the impugned order. Further, the petitioner was not given any opportunity to engage Advocate on his side to put forth his defence on request made by the second respondent. 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 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."

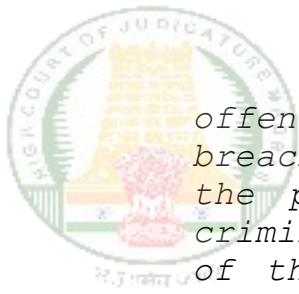
The above legal principles as evolved have to be followed by all the Executive Magistrates concerned.

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.07/2022/A.3 in M.C.No.49/2022/A.3, dated 20.04.2022 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.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

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 Second Class Taluk Executive Magistrate
cum Thasildar,
Dindigul (East),
Dindigul,
Dindigul District.

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

3. The District Prison,
Dindigul, Dindigul District.

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

+1 CC to M/s.S. SARVAGAN PRABHU, Advocate (SR-23128[F] dated
02/05/2022)

Order made in
Cr1.R.C (MD) No.426 of 2022
29.04.2022

nsn(CO)
TR(06.05.2022) 5P 6C