



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.06.2022

Delivered on : 27.06.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

WEB COPY

CRL.R.C.(MD).No.452 of 2022

and

CRL.M.P.(MD)No.5871 of 2022

Mohanraj : Petitioner/Accused
Vs.

1.The II Class Executive Magistrate and Tahsildar,
Dindigul West Taluk Office,
Dindigul Town, Dindigul District.

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

3.The Superintendent of Prison,
District Jail, Dindigul,
Dindigul District. : Respondents/Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records pertaining to the order of the first respondent in M.C.No.28 of 2022/A5, dated 11.03.2022 and set aside the same.

For Petitioner : Mr.V.Karuna,
For Respondents : Mr.S.Manikandan,
Government Advocate (Criminal Side)

ORDER

The Criminal Revision Case is directed against the order, dated 11.03.2022 passed by the first respondent/The II Class Executive Magistrate and Tahsildar, Dindigul West Taluk Office, Dindigul Town, Dindigul District in M.C.No.28/2022/A5, under Section 122(1) (b) of the Code of Criminal Procedure.

2.The first respondent, on the basis of the report sent by the second respondent, initiated proceedings under Section 110 Cr.P.C, in LIR No.27/2022 on 05.02.2022, and on that basis, the petitioner has been bound over and released after he executed a bond for maintaining good behaviour for a period one six months till 06.08.2022. Subsequently, a criminal case was registered against the petitioner in Crime No.126 of 2022 on the file of the Dindigul Taluk Police Station, under Section 379 IPC on 09.03.2022 and the petitioner was arrested and remanded to judicial custody on



09.03.2022. The second respondent, by alleging that the petitioner violated/breached the bond executed by him, has sent a requisition, requesting the first respondent to initiate necessary action under Section 122(1)(b) Cr.P.C. Based on the requisition of the second respondent Police, the first respondent issued a show cause notice to the prison officials, directing them to produce the petitioner on 11.03.2022. The first respondent after conducting enquiry, has passed the impugned order vide proceedings in M.C.No.28/2022/A5, dated 11.03.2022, cancelling the security bond executed by the petitioner on 07.02.2022 and ordered to detain him in prison until the expiry of the period of bond viz., 06.08.2022. Aggrieved by the said order, the petitioner has preferred the present revision.

3.Heard Mr.V.Karuna, learned counsel for the petitioner and Mr.S.Manikandan, learned Government Advocate (Criminal Side) appearing for the respondents.

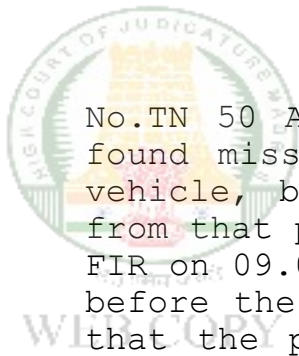
4.The learned counsel for the petitioner would submit that the FIR referred by the respondents in Crime No.230 of 2019 on the file of the Dindigul Police Station, for the alleged offence under Sections 324, 326, 342, 379, 394, 506(ii) IPC was not at all sent to the concerned Court, that after enquiry, the petitioner came to know that Crime No.230 of 2019 was registered by the said police for the offence under Section 4(1)(a) of Tamil Nadu Prohibition Act and that there was no such FIR as alleged by the respondents against the petitioner.

5.The learned Government Advocate (Criminal Side) appearing for the State would submit that by mistake the name of the Police Station has been wrongly mentioned as Dindigul Taluk Police Station instead of Vidasandhur Police Station, that the Vidasandur Police has registered the case in Crime No.230 of 2019 against the petitioner for the alleged offence under Sections 324, 326, 342, 379, 394, 506(ii) IPC and that since it is only a mistake committed by the oversight, the same cannot be taken advantage of by the petitioner.

6.In the counter affidavit, the second respondent has specifically mentioned the particulars of four cases pending against the petitioner, which includes the case in Crime No.230 of 2019 on the file of the Vidasanthur Police Station for the alleged offences under Section 324, 326, 342, 379, 394, 506(ii) IPC altered into 326, 342, 394 and 506(ii) IPC.

7.Considering the above, since it is a typographical mistake committed by the respondents 1 and 2, the same cannot be taken advantage of by the petitioner.

8.The learned counsel for the petitioner would submit that one Karuppasamy has lodged a complaint alleging that on 08.03.2022 at



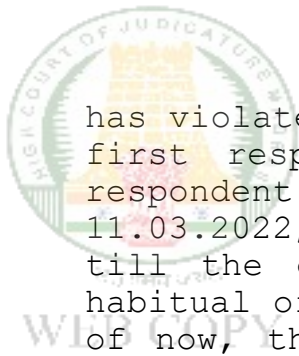
No.TN 50 AV 4253, which was parked in front of their backyard, was found missing, that they have chased a person, who had taken the vehicle, but the said person along with other persons had escaped from that place, that the second respondent Police after registering FIR on 09.03.2022, has produced the petitioner and two other persons before the learned Magistrate at 09.30 pm on 09.03.2022 by alleging that the petitioner and others were arrested at 11.30 am on that day.

9.The learned counsel for the petitioner would further submit that the petitioner, who was addicted to Alcohol, was admitted in the Institute for Community Development Service (ICDS), Dindigul on 08.03.2022 at about 12.30 pm, that on 09.03.2022 the Dindigul Taluk Police came and took away the petitioner/accused by alleging that he was involved in a theft case and that the petitioner was falsely implicated in the above case. The learned counsel for the petitioner has produced the copy of the certificate issued by the Director of the Institute for Community Development Service (ICDS), Dindigul, wherein he has specifically stated that the petitioner was admitted at about 12.30 pm on 08.03.2022 and on the next day i.e., on 09.03.2022, the Police from the Taluk Police Station came and took away the petitioner as if he was involved in a theft case.

10.The learned counsel for the petitioner would further submit that the petitioner was admitted in the said Institute at about 12.30 pm on 08.03.2022, but the vehicle was allegedly stolen at about 06.30 pm on 08.03.2022 and that though the petitioner has taken the above defence, neither the second respondent nor the first respondent has considered the same.

11.The learned counsel for the petitioner would submit that the impugned order has been passed without following the procedure laid down by this Court, that the first respondent has not conducted proper enquiry as prescribed in the law, that the petitioner's right to get legal assistance was denied, that no opportunity was given to the petitioner to get the documents, that the first respondent has failed to supply all the documents mentioned in the impugned order, that the learned Magistrate has no power to invoke Section 122 (1) (b) of Cr.P.C for the violation of the bond executed under Section 110 Cr.P.C and that the personal liberty of the petitioner was seriously affected by the impugned order passed by the first respondent.

12.The learned Government Advocate (Criminal Side) appearing for the State would submit that the petitioner has been continuously and frequently involving in various criminal activities and caused various problem against the public peace and tranquillity, that during the pendency of the bond period, the petitioner was involved in an offence for which, FIR came to be registered in Crime No.126 of 2022 on the file of the Dindigul Taluk Police Station for the offence under Section 379 IPC, that since the petitioner



has violated the bond, at the instance of the second respondent, the first respondent has initiated the proceedings, that the first respondent after conducting proper enquiry, has passed the order on 11.03.2022, cancelling the security bond and ordered to detain him till the expiry of the bond period, that the petitioner is the habitual offender and four criminal cases are pending against him as of now, that the petitioner was given sufficient opportunities as per the procedure enumerated under Cr.P.C and that therefore, the question of setting aside the order passed by the first respondent does not arise at all.

13.As rightly contended by the learned counsel for the petitioner, the respondents 1 and 2 have not considered the certificate dated 22.04.2022 issued by the Director of Institute Community Development Service (ICDS), Dindigul and it is not the case of the second respondent that they have conducted any investigation in this regard.

14.The learned counsel for the petitioner would strongly contend that the first respondent has failed to comply with the principles of natural justice and as such, the impugned order is legally unsustainable and relied on a decision of this Court in **P.Sathish @ Sathish Kumar Vs. State represented by the Inspector of Police**, reported in **2019 (2) MWN (Cr.) 136** and the relevant passages are extracted herein.

"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 circumstances, 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."

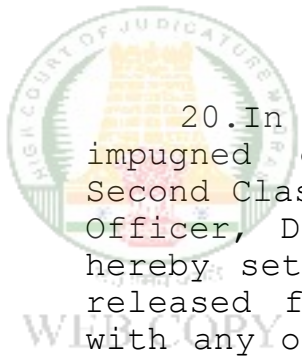
15. A learned Judge of this Court, after considering the various decisions of this Court as well as the Hon'le Apex Court, has laid down the legal principles to be followed in the proceedings initiated under Section 122(1)(b) of Cr.P.C and further directed that the principles laid down are to be followed by all the Executive Magistrates and in order to infuse uniform approach by all the Executive Magistrates, the learned State Public Prosecutor was directed to circulate the decision to the Government and the Government shall act upon the principles as laid down above and issue necessary instructions to all the designated Executive Magistrates to follow the principles strictly.

16. The above decision and the principles laid down therein are squarely applicable to the case on hand.

17. It is evident from the impugned order that the first respondent has summoned and examined the Sub-Inspector of Police, Dindigul Taluk Police Station, in which, the case registered in Crime No.126 of 2022. It is pertinent to note that the first respondent/Magistrate, in the impugned order, has not listed out the witnesses examined and the documents produced and exhibited by both the parties.

18. As rightly contended by the learned counsel for the petitioner, it is clearly evident from the impugned order that the first respondent has not followed the legal principles laid down by this Court. It is further evident that the petitioner is in judicial custody from 08.03.2022 and the period of detention is likely to be over within a short period.

19. Considering the above, this Court has no hesitation to hold that the impugned order is not good in law and the same is liable to be set aside.



20. In the result, the Criminal Revision is allowed and the impugned order dated 11.03.2022 passed by the first respondent/The Second Class Executive Magistrate/The Tahsildar, Dindigul West Taluk Officer, Dindigul Town, Dindigul District in M.C.No.28/2022/A5, is hereby set aside and therefore, the petitioner is directed to be released forthwith, unless his custody is required in connection with any other case. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

28/06/2022

Sub Assistant Registrar(CS)

das

To

- 1.The II Class Executive Magistrate and Tahsildar,
Dindigul West Taluk Office,
Dindigul Town, Dindigul District.
- 2.The Inspector of Police,
Taluk Police Station, Dindigul.
- 3.The Superintendent of Prison,
District Jail, Dindigul, 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.V. KARUNA, Advocate (SR-28603[F] dated 28/06/2022)

order made in
CRL.R.C. (MD).No.452 of 2022
and
CRL.M.P. (MD)No.5871 of 2022
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