



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.05.2022

CORAM:

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THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

Crl.R.C. (MD) .No.480 of 2022

Velmurugan

.. Petitioner/Offender

Vs.

1.The learned II Class Executive Magistrate Cum Tahsildar,
Aathur Taluk,
Dindigul District.

2.The State Rep by
The Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.

.. Respondents/Complainants

Prayer:- Criminal Revision petition is filed under Section 397 r/w 401 Cr.P.C. to call for records pertaining to the order passed in M.C.No.121/2021/Aa3, dated 05.05.2022, on the file of the learned II Class Executive Magistrate Cum Thasildar, Aathur Taluk, Dindigul, and set aside the same as illegal.

For Petitioner :Mr.K.Sivabalan

For Respondent :Mrs.M.Aasha
Government Advocate (Crl.Side)

ORDER

The Criminal Revision case is filed to call for records pertaining to the order passed in M.C.No.121/2021/Aa3, dated 05.05.2022, on the file of the learned II Class Executive Magistrate Cum Thasildar, Aathur Taluk, Dindigul, and set aside the same as illegal.

2. Originally, the petitioner executed a bond before the first respondent under Section 110(e) Cr.P.C for a period of one year. Pending the bond period, again on 28.04.2022, the petitioner involved in another case in Crime No.101 of 2022 registered for the offence under Section 8(C) r/w 20(b) II (B) NDPS Act. On the very same day, the petitioner was arrested and remanded to judicial custody. Thereafter, the second respondent had recommended the first respondent to initiate proceedings under Section 122 (1)(b) Cr.P.C. The first respondent without issuing any show cause notice to the petitioner and without giving opportunity of hearing to the petitioner, mechanically passed an order on 05.05.2022 and thereby,



detained the petitioner for the remaining bond period. That apart, the petitioner originally executed a bond under Section 110 Cr.P.C. Therefore, the first respondent ought not to have initiated proceedings under Section 121(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."



3. Further, in the case of **Devi Vs. The Executive Magistrate and one another in CrI.R.C.No.78 of 2020, dated 25.09.2020**, this Court has held as follows:-

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"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.

4. 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 M.C.No.121/2021/Aa3, dated 05.05.2022, 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/-

Vacation Officer (CS III)

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20/05/2022

Sub Assistant Registrar(CS)

dss

To

1.The learned II Class Executive Magistrate Cum Tahsildar,
Aathur Taluk,
Dindigul District.

2.The Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.

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

+1 CC to M/s.K. SIVABALAN, Advocate (SR-23907[F] dated 20/05/2022)

Cr1.R.C. (MD) .No.480 of 2022

19.05.2022

SS/20.05.2022 : 4P/5C