



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.06.2022

Delivered on : 27.06.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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CRL.R.C. (MD).No.507 of 2022

and

CRL.M.P. (MD)No.6354 of 2022

Moorthy : Petitioner/Respondent
(Now Detained at Central
Prison, Madurai)

Vs.

1.The II Class Executive Magistrate cum
Tahsildar, Palani Taluk,
Dindigul District.

2.The Sub-Inspector of Police,
Palani Adivaram Police Station,
Dindigul District

3.The Superintendent,
Central Prison, Madurai. : Respondents/Complainants

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records relating to the proceedings in M.C.No.76/2020/A1 on the file of the first respondent, dated 13.05.2022 and set aside the same.

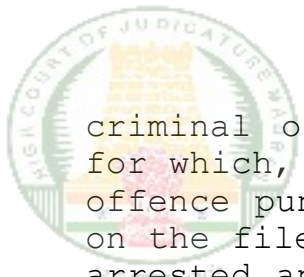
For Petitioner : Mr.Adithya Vijayalayan, N.

For Respondents : Mr.K.Sanjai Gandhi,
Government Advocate (Criminal Side)

ORDER

The Criminal Revision Case is directed against the order, dated 13.05.2022 passed by the first respondent/The II Class Executive Magistrate cum Tahsildar, Palani Taluk, Dindigul District in M.C.No.76/2020/A1, under Section 122(1) (b) of the Code of Criminal Procedure.

2.The first respondent, on the basis of the report of the second respondent, initiated proceedings under Section 109 Cr.P.C, in LIR No.11/2022 on 09.03.2022, conducted enquiry and ordered the petitioner to execute a bond for maintaining good behaviour for a period of one year viz., from 09.03.2022 to 08.03.2023. During the pendency of the bond period, the petitioner was involved in a

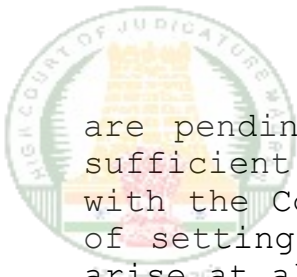


criminal offence by selling the Government banned Lottery Tickets for which, FIR came to be registered in Crime No.219 of 2022 for the offence punishable under Sections 7(1)(3) Lottery Act on 06.05.2022 on the file of the Palani Town Police Station and the petitioner was arrested and remanded to judicial custody on 06.05.2022. The second respondent, by alleging that the petitioner violated/breached the bond executed by him, has sent a requisition, dated 08.05.2022, requesting the first respondent to initiate necessary action under Section 122(1)(b) Cr.P.C. Based on the said report sent by the second respondent Police, the first respondent issued a show cause notice to the petitioner through Superintendent of Sub Jail, Palani and directed them to produce the petitioner before the first respondent on 13.05.2022. The first respondent after enquiry, has passed the impugned order dated 13.05.2022, cancelling the security bond executed by the petitioner on 09.03.2022 and ordered to detain him in prison until the expiry of the period of bond viz., 08.03.2023. Aggrieved by the said order, the petitioner has preferred the present revision.

3. Heard Mr.N.Adithya Vijayalayan, learned counsel for the petitioner and Mr.K.Sanjai Gandhi, learned Government Advocate (Criminal Side) appearing for the respondents.

4.The learned counsel for the petitioner would submit that the summons was issued to the petitioner asking to appear on 13.05.2022 for enquiry under Section 122(1)(b) Cr.P.C and the impugned order was passed on the same day; that the first respondent has not provided sufficient opportunity to the petitioner to contest the proceedings; that the first respondent has not provided the materials sought to be relied upon to the petitioner before passing the impugned order; that the petitioner was not informed and he was not provided to have an assistance of an Advocate to contest the proceedings, that the first respondent has not recorded his satisfaction to show that the petitioner has violated the bond conditions and that the personal liberty of the petitioner was seriously affected by the impugned order passed by the first respondent.

5.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 many criminal cases have registered against him by various Police Stations; that during the pendency of the bond period, the petitioner was involved in selling of Government banned Lottery Tickets for which, FIR came to be registered in Crime No.219 of 2022 for the offence punishable under Sections 7(1)(3) Lottery Act; 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 13.05.2022, cancelling the security bond and ordered to detain him till the expiry of the bond period, that the petitioner is a habitual offender and five criminal cases



are pending against him as of now, that the petitioner was given sufficient opportunities to contest the proceedings in accordance with the Code of Criminal Procedure and that therefore, the question of setting aside the order passed by the first respondent does not arise at all.

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6.As rightly pointed by the learned Government Advocate (Criminal Side), the second respondent in his counter affidavit has listed out five cases pending against the petitioner on the file of the Palani Town Police Station and Palani Adivaram Police Station.

7.The learned counsel for the petitioner would submit that the first respondent without giving sufficient opportunities to contest the proceedings and without giving opportunity to engage an Advocate, has failed to comply with the principle 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."

8.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.

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

10.It is evident from the impugned order that the first respondent has summoned and examined the Sub-Inspector of Police, Palani Town Police Station, in which, FIR came to be registered in Crime No.219 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.

11.It is evident from the records that the first respondent has directed the Superintendent of Sub Jail to produce the petitioner before him on 13.05.2022, that the first respondent has completed enquiry and passed the impugned order on that day itself.

12.It is further evident that the first respondent has examined the Sub-Inspector of Police, Palani Town Police Station and the petitioner/accused and in the impugned order, after recording the evidence adduced by the said two witnesses, without any discussion, has concluded in the last paragraph by giving title as "Final judgment" that though the petitioner has executed a bond for maintaining a good behaviour for a period of one year on 09.03.2022, during the pendency of the period, he committed an offence, for which, FIR came to be registered in Crime No.219 of 2022, dated 06.05.2022 and has come to the decision that the petitioner has violated the bond and passed the impugned order.

13.As rightly contended by the learned counsel for the petitioner, it is clearly evident that the first respondent has not followed the legal principles laid down by this Court. 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.



14. In the result, the Criminal Revision is allowed and the impugned order dated 26.04.2022 passed by the first respondent/The II Class Executive Magistrate cum Tahsildar, Palani Taluk, Dindigul District in M.C.No.76/2020/A1, 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 (P&A)

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/06/2022

Sub Assistant Registrar(CS)

das

To

- 1.The II Class Executive Magistrate cum
Tahsildar, Palani Taluk, Dindigul District.
- 2.The Sub-Inspector of Police,
Palani Adivaram Police Station,
Dindigul District
- 3.The Superintendent,
Central Prison, Madurai.

Copy to

- 1.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D. VENKATESH, Advocate (SR-28797[F] dated 29/06/2022)
CRL.R.C.(MD).No.507 of 2022
and
CRL.M.P.(MD)No.6354 of 2022
27.06.2022

MGJ(29.06.2022) 5P 8C