



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2022

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.622 of 2022

Muthukumar

.. Petitioner/Detenu e

Vs.

1.The Sub-Divisional Magistrate and
Revenue Divisional Officer,
Kovilpatti, Thoothukudi District.

2.The Inspector of Police,
Kovilpatti West Police Station,
Kovilpatti,
Thoothukudi District.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

4.The Superintendent of Prison,
District Jail,
Peravoorani,
Thoothukudi District.

.. Respondents/Complainant

PRAYER: This Civil Revision Case is filed under Sections 397 (3) r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order dated 28.06.2022, passed by the 1st respondent/Sub-Divisional Magistrate/the Revenue Divisional Officer, Kovilpatti, Thoothukudi District, in Na.Ka.A1.6828/2022 and set aside the same as illegal.

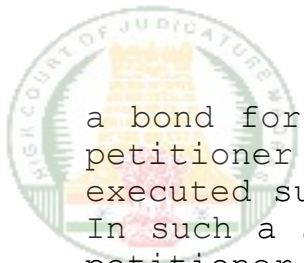
For Petitioner : Mr.N.Pragalathan

For Respondent : Mr.S.Manikandan
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed against the order passed by the respondent in Na.Ka.A1.6828/2022, dated 28.06.2022.

2.The petitioner was issued with a notice by the 1st respondent under Section 107 Cr.P.C. to show cause as to why he should not execute a bond for keeping the peace for a period of six months with



a bond for a sum of Rs.10,000/-. Following which on 16.05.2022 the petitioner is said to have appeared before the 1st respondent and executed such bond for a sum of Rs.15,000/- with surety. In such a situation on 22.06.2022 a case was registered against the petitioner by 2nd respondent police in Crime No.380 of 2022 for the offence punishable under Section 8 (C) r/w Section 20(b)(ii)(B) of NDPS Act. Hence, the first respondent passed the impugned order in Na.Ka.A1.6828/2022, dated 28.06.2022, whereby, the petitioner was ordered to be detained in prison under Section 122(1)(b) of Cr.P.C. for breaching the bond executed by the petitioner under Section 107 of Cr.P.C. Aggrieved over the same the present criminal revision is filed before this Court.

3.The learned Government Advocate (Crl. Side) appearing for the respondent submitted that the procedure has been followed properly. According to the learned Government Advocate (Crl. Side), the petitioner was enquired by the first respondent. During the course of enquiry, he himself admitted the charges framed against him. Based on the admission made by the petitioner and the records available with the respondent police, the first respondent has passed the above order.

4.The learned counsel for the petitioner submitted that the first respondent has not given any notice to the petitioner. Even though subsequent happenings are there, the procedure has not been properly followed. For that purpose, the learned counsel for the petitioner relied upon 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.

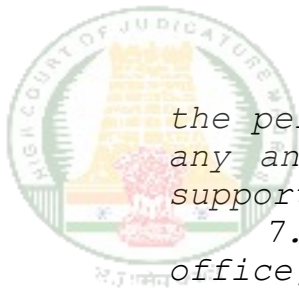
2.At the enquiry, the Executive Magistrate should furnish the person the materials sought to be relied upon, including statements of witnesses, if any, in the vernacular (if the person is not knowing the language other than his mother tongue).

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, 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."

5. In view of the above, this petition is liable to be allowed and accordingly, **allowed** and the order passed by the 1st respondent/Sub-Divisional Magistrate/the Revenue Divisional Officer, Kovilpatti, Thoothukudi District, Na.Ka.A1.6828/2022, dated 28.06.2022, is hereby set aside. However, liberty is granted to the first respondent herein to initiate fresh action, if so required, by following the procedure that has been set out in the above said Judgment.

Sd/-

Assistant Registrar ()

// True Copy //

/11/2022

Sub Assistant Registrar(CS)

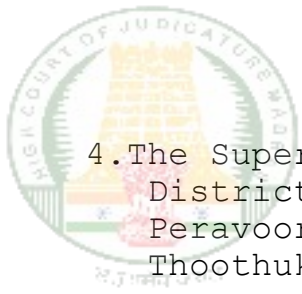
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To

1. The Sub-Divisional Magistrate/the Revenue Divisional Officer, Kovilpatti, Thoothukudi District.

2. The Inspector of Police,
Kovilpatti West Police Station,
Kovilpatti,
Thoothukudi District.

3. The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli District.



4.The Superintendent of Prison,
District Jail,
Peravoorani,
Thoothukudi District.

5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

Copy to

The Section officer,
Criminal Section,
Madurai Bench of Madras Highcourt, Madurai (2 Copies).

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-50034[F] dated
18/10/2022)

Crl.R.C. (MD) .No.622 of 2022
18.10.2022

AMS (03.11.2022) 4P 9C