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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.08.2022

Delivered on : 26.08.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.773 of 2022

Irettai Muthu : Petitioner

Vs.

1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Tiruchendur, Thoothukudi District.

2.The Inspector of Police,
Meignanapuram Police Station,
Thoothukudi District.
(LIR No.Nil, dated 09.12.2021)

3.The Superintendent of Prison,
District Prison,
Thoothukudi District. : Respondents

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 order of the first respondent by proceedings in M.C.No.136/2022, dated 22.03.2022 and set aside the same as illegal and allow the above Criminal Revision Petition.

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For Petitioner : Mr.R.Ponkarthikeyan,

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

ORDER

The Criminal Revision Case is directed against the order, dated 22.03.2022 passed by the first respondent / Sub Divisional Magistrate cum Revenue Divisional Officer, Tiruchendur, Thoothukudi District, in M.C. No.136/2022, 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 110 Cr.P.C, conducted enquiry and ordered the petitioner to execute a bond under Section 110 Cr.P.C, on 09.12.2021 and on that basis, the petitioner has been bound over and released, after executing a bond, for maintaining good behaviour for a period of one year viz., from 09.12.2021 to 08.12.2022. Subsequently, a criminal case was registered on 12.03.2022 against the petitioner in Crime No.81 of 2022 for the offences punishable under Sections 294(b), 323, 506(ii) IPC and Section 4 of TNPHW Act and the petitioner was arrested and was remanded to judicial custody on the same day. The second respondent, by alleging that the petitioner

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violated/breached the bond executed by him, has sent a communication, requesting the first respondent to initiate necessary action under Section 122(1) (b) Cr.P.C. Based on the said report of the second respondent, the first respondent issued a show cause notice to the petitioner and the petitioner has also appeared before the first respondent. The first respondent after enquiry, has passed the impugned order vide proceedings in M.C.No.136/2022, dated 22.03.2022, cancelling the security bond executed by the petitioner on 09.12.2021 and ordered to detain her in prison until the expiry of the period of bond viz., 08.12.2022. Aggrieved by the said order, the petitioner has preferred the present revision.

3. Heard Mr.R.Pon Karthikeyan, 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 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

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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.

5. A 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.81 of 2022 for the offences punishable under Sections 294(b), 323, 506(ii) IPC and Section 4 of TNPHW 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 22.03.2022, cancelling the security bond and ordered to detain him till the expiry of the bond period, that the petitioner is the habitual offender and seven 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.

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6. No doubt, the second respondent in their counter affidavit has listed out six cases pending against the petitioner on the file of the Meignanapuram Police Station and one case on the file of the Sathankulam Police Station.

7. 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.*

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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

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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 complainant in the cases registered in Crime No.81 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. 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 22.03.2022.

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12. 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.

13. In the result, the Criminal Revision is allowed and the impugned order dated 22.03.2022 passed by the first respondent/Sub Divisional Magistrate cum Revenue Divisional Officer, Tiruchendur, Thoothukudi District, is hereby set aside and therefore, the petitioner is directed to be released forthwith, unless her custody is required in connection with any other case.

26.08.2022

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1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Tiruchendur, Thoothukudi District.

2.The Inspector of Police,
Meignanapuram Police Station,
Thoothukudi District.

3.The Superintendent of Prison,
District Prison,
Thoothukudi District.

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

5.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR, J.

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