



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.09.2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.R.C.(MD).Nos.841, 863 & 866 of 2022

in

Crl.MP(MD)No.10543, 10792 & 10813 of 2022

Lakshmanan .. Petitioner/Respondent
(In Crl.R.C.(MD)No.841 of 2022)

Vairavel .. Petitioner/Respondent
(In Crl.R.C.(MD)No.863 of 2022)

Mathan .. Petitioner/Respondent
(In Crl.R.C.(MD)No.841 of 2022)
Vs.

1.The Executive Magistrate 2nd Class/Tahsildar,
Kodaikanal, Dindigul District.
Na.Ka.No.110/2022/A2

2.The Inspector of Police,
Kodaikonal Police Station,
Dindigul Station,
Dindigul District. .. Respondents/Complainants
(In all Petitions)

Common Prayer:- Criminal Revision petitions are filed under Section 397 r/w 401 Cr.P.C, to call for the records of the proceedings in Na.Ka.No.110/2022/A2 dated 02.08.2022 on the file of the 1st respondent and set aside the same.

(In all Petitions)

For Petitioners : Mr.S.Muniyandi

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

**COMMON ORDER**

WEB COPY These Criminal Revisions Cases are filed seeking quashment of proceedings in Na.Ka.No.110/2022/A2, dated 02.08.2022, on the file of the first respondent.

1.Facts in brief:-

(i) The revision petitioner namely, Lakshmanan in Crl.R.C. (MD)No.841 of 2022 was proceed under Section 110 Cr.P.C., on the basis of the case registered in Crime No.196 of 2022 on the file of the second respondent police station. In view of the above said proceedings, order was passed, on 02.08.2022, under Section 122 (1) (b) of Cr.P.C., Challenging the above said proceedings and the order, this revision has been preferred.

(ii) Crl.R.C.(MD)No.863 of 2022 has been filed by one Vairavel. The facts is that originally, the second respondent registered a case in LIR.No.32 of 2022 under Section 110 Cr.P.C on 15.07.2022. The petitioner executed surety for six months. Thereafter, the second respondent registered a case in Crime No.196 of 2022 for the offence punishable under Section 8 (c), r/w 20 (b) (ii) (B) NDPS Act, on 18.07.2022. The above said case is pending. The petitioner was arrested



and remanded to custody. During the pendency of the above said investigation, the present proceedings has been initiated by the first respondent under Section 110(c) of Cr.P.C., and passed orders under Section 122 (1) (d) of the Act. Challenging the above, this revision has been preferred.

(iii) Insofar as the CrI.R.C.(MD)No.866 of 2022, Madhan is concerned, he was proceeded under Section 110 Cr.P.C in LIR.No.35 of 2022, dated 15.07.2022, and he executed a bond to good behaviour for a period of six months. Later, the second respondent registered a case in Crime No.196 of 2022 under Section 8 (c), r/w 20 (b) (ii) (B) NDPS Act, on 18.07.2022 and he was arrested and remanded to custody on 18.07.2022. During the pendency of the investigation in the above said order, the present proceedings has been initiated by the first respondent and order has been passed under Section 122 (1) (b) of Cr.P.C., on 02.08.2022. Challenging the above said order, this revision has been preferred.

2. In all these revisions, common question of law has been raised. So, all the matters are heard together and disposed of by common order.



3. The learned counsel for the petitioners would rely upon the judgment 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.”

4. This set out the principles to be followed while dealing with the proceedings under Section 122 (1) (b) of Cr.P.C. Relying upon the above said order, Cr.R.C.(MD)No.492 of 2022 has been decided by the Co-ordinate Bench of this Court. The relevant guidelines that has been set out in **P.Sathish @ Sathish Kumar Vs.State represented by the Inspector of Police** (cited supra) has not been properly followed in all these matters.



5. Reading of the order passed shows that on the date of the production of the petitioner, the evidence of the second respondent/police officials has been recorded. Finding that a case in Crime No.196 of 2022 has been registered, the above said order has been passed. None of the guidelines has been set out in the order has not been followed. So, on the sole ground, all these petitions are liable to be allowed.

6. Accordingly, the impugned order, dated 02.08.2022, passed by the first respondent/the Executive Magistrate 2nd Class/Tahsildar, Kodaikanal, Dindigul District, is hereby set aside in all those Criminal Revision Cases and all **Criminal Revision Cases are allowed.** Therefore, the petitioners are ordered to be released forthwith, unless their custody is required in connection with any other case. Consequently, the connected Criminal Miscellaneous Petitions are closed.

7. But, however, liberty is given to the respondents to initiate fresh action by following the due procedure as set out in the above judgment. This order will not be an impediment to initiate fresh proceedings.

19.09.2022

Internet : Yes/No
Internet : Yes/No



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To

1. The Executive Magistrate 2nd Class/Tahsildar,
Kodaikanal,
Dindigul District.
Na.Ka.No.110/2022/A2
2. The Inspector of Police,
Kodaikonal Police Station,
Dindigul Station,
Dindigul District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAᅒ, J.

dss

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