



WEB COPY



Crl.R.C.(MD).No.901 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2022

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.901 of 2022
and Crl.M.P.(MD).No.11199 of 2022

Kalairasan

.. Petitioner

Vs.

1.The 2nd Class Executive Magistrate/Revenue Tahsildar
Uthamapalayam Sub Division,
Theni District.
Na.Ka.No.6490/2022/A8

2.The Inspector of Police,
Gudalur North Police Station,
Theni District.

.. Respondents

PRAYER: This Civil Revision Case is filed under Sections 397 (3) r/w 401 of the Criminal Procedure Code, to call for the records of the proceedings in Na.Ka.No.6490/2022/A8, dated 07.07.2022 on the file of the 1st respondent and set aside the same.

For Petitioner : Mr.S.Sundarapandian

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

ORDER

This Criminal Revision Case has been filed against the proceedings initiated by the first respondent in Na.Ka.No.6490/2022/A8, dated



Crl.R.C.(MD).No.901 of 2022

07.07.2022.

WEB COPY

2.The proceedings has been initiated under Section 122 (1)(b)Cr.P.C., stating that this petitioner is involved in illegal transporting of Ganja. Reading of the order shows that there is complete non-application of mind. It has been stated that on 07.07.2022 the above said order has been passed only based on the FIR in Crime no.177 of 2022 on the file of the second respondent registered for the offence punishable under Sections 8(c) r/w 20(b)(ii)(B), 29(1) of NDPS Act and no enquiry was undertaken as contemplated under Section 122 (1)(b) of Cr.P.C.

3.The learned Additional Public Prosecutor appearing for the respondent submitted that the procedure has been followed properly. According to the learned Additional Public Prosecutor, the petitioner was summoned and enquired on 04.07.2022 and 07.07.2022 and sufficient opportunity was given to him. Though the petitioner has executed sureties before the first respondent, he again involved in illegal transportation of Ganja. Therefore, the impugned order has been passed by the first respondent.



4.The learned counsel for the petitioner submitted that 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, 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. ”*

5. In view of the above, this petition is liable to be allowed and accordingly, allowed and the 133 Cr.P.C. proceedings initiated by the respondent in Na.Ka.No.6490/2022/A8 dated 07.07.2022 is hereby quashed. However, liberty is granted to the respondent herein to initiate fresh action, if so required, by following the procedure that has been set out in the above



Crl.R.C.(MD).No.901 of 2022

said Judgment. Consequently, connected miscellaneous petition is closed.

WEB COPY

28.09.2022

Index : Yes / No
Internet : Yes / No
TM

To

- 1.The 2nd Class Executive Magistrate/Revenue Tahsildar
Uthamapalayam Sub Division,
Theni District.
Na.Ka.No.6490/2022/A8
- 2.The Inspector of Police,
Gudalur North Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.R.C.(MD).No.901 of 2022

G.ILANGO VAN,J.

TM

Crl.R.C.(MD).No.901 of 2022

28.09.2022