



Crl.R.C.(MD).No.927 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 23.09.2022

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.927 of 2022
and Crl.M.P.(MD).No.11481 of 2022

Saibunisha

.. Petitioner/Detenue

Vs.

1.The 2nd Class Executive Magistrate and Tahsildar,
Thiruvadanai,
Ramanathapuram District.

2.The Superintendent of Prison,
Central Prison,
Madurai.

3.The Inspector of Police,
Thondi Police Station,
Ramanathapuram District.

.. Respondents

PRAYER: This Civil Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the order in M.C.No.28 of 2022, dated 07.09.2022 on the file of the 1st respondent.

For Petitioner : Mr.P.Ganapathi Subramanian

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

ORDER

This Criminal Revision Case has been filed against the order passed



Crl.R.C.(MD).No.927 of 2022

in M.C.No.28 of 2022, dated 07.09.2022 on the file of the 1st respondent.

WEB COPY

2.The proceedings has been initiated under Sections 110 and 111 of Cr.P.C., summoning this petitioner calling upon her to show cause as to why she should not enter into bond for Rs.50,000/- (Rupees Fifty Thousand only) under Section 122(1)(b) Cr.P.C. Reading of the order shows that there is complete non-application of mind. According to the learned counsel for the petitioner no enquiry was undertaken as contemplated in Rules.

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, statement of witnesses has been recorded on 07.09.2022. Since she is a habitual offender under law and order case, this impugned order came to be passed. The learned Additional Public Prosecutor circulated a copy of the statement recorded from the petitioner.

4.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



Crl.R.C.(MD).No.927 of 2022

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 first respondent in M.C.No.28 of 2022, dated 07.09.2022 , 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 said Judgment. Consequently, connected miscellaneous petition is closed.

23.09.2022

Index : Yes / No
Internet : Yes / No
TM



Crl.R.C.(MD).No.927 of 2022

To

WEB COPY

1. The 2nd Class Executive Magistrate and Tahsildar,
Thiruvadanai,
Ramanathapuram District.
2. The Superintendent of Prison,
Central Prison,
Madurai.
3. The Inspector of Police,
Thondi Police Station,
Ramanathapuram District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.R.C.(MD).No.927 of 2022

G.ILANGOVA,N,J.

TM

Crl.R.C.(MD).No.927 of 2022

23.09.2022