



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2022

CORAM:

THE HON'BLE MR JUSTICE A.A.NAKKIRAN

Crl.R.C.(MD).No.970 of 2022

in

Crl.MP(MD)No.11934 of 2022

Gunasekaran .. Petitioner/Respondent
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 District. .. Respondents/Complainants

Prayer:- Criminal Revision petition is 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.

For Petitioner : Mr.N.Mohan

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

ORDER

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



2.The case of the prosecution is that the second respondent registered a case in LIR.No.39 of 2022 under Section 110 Cr.P.C to give security for good behavior for six months on 15.07.2022. The petitioner executed security for six months. Thereafter, the second respondent registered a case in Crime No.197 of 2022 for the offence punishable under Section 8 (c), r/w 20 (b) (ii) (B) of NDPS Act, on 18.07.2022. On the same day itself he was arrested and remanded to judicial custody. The above said case is still pending. 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) (b) of the Act. Challenging the above, this revision has been preferred.

3. The learned counsel for the petitioner 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.



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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 this matter.

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.197 of 2022 has been registered, the above said order has been passed. None of the guidelines that has been set out in **P.Sathish @ Sathish Kumar Vs.State represented by the Inspector of Police** (cited supra) has not been followed. So, on the sole ground, this petition is 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** and the **Criminal Revision Case is allowed**. Therefore, the petitioner is ordered to be released forthwith, unless his custody is required in connection with any other case. Consequently, the connected Criminal Miscellaneous Petition is 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.

10.10.2022

Internet : Yes/No
Internet : Yes/No
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Note : Issue order copy on 11.10.2022

To

1. The Executive Magistrate 2nd Class/Tahsildar,
Kodaikanal, Dindigul District.

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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A.A.NAKKIRAN, J.,

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