

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.10.2022

CORAM

**THE HONOURABLE MR. JUSTICE G.ILANGO VAN**

Crl.R.C.(MD).No.1022 of 2022  
and Crl.M.P.(MD).No.12854 of 2022

Ponnangan

.. Petitioner/Accused

*Vs.*

1.The II Class Executive Magistrate cum  
Revenue Tahsildar,  
Andipatti, Theni District.

.. 1<sup>st</sup> Respondent

2.The State through  
The Inspector of Police,  
Varushanadu Police Station,  
Varusanadu.

.. 2<sup>nd</sup> Respondent/Complainant

3.The Superintendent of Prison,  
District Jail, Theni.

.. 3<sup>rd</sup> Respondent

**PRAYER:** This Civil Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order of the 1<sup>st</sup> respondent by his proceedings in Na.Ka.No.6650/2022/A4, dated 06.09.2022 and set aside the same as illegal and allow the Criminal Revision Petition.

For Petitioner : Mr.S.Sivaprakash

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

**ORDER**

This Criminal Revision Case has been filed to set aside the order, dated 06.09.2022, passed by the 1<sup>st</sup> respondent/2<sup>nd</sup> Class Executive Magistrate/Revenue Tahsildar, Andipatti, Theni District, in Na.Ka.No. 6650/2022/A4.

2.The proceedings under Section 122(1)(b) has been initiated against the petitioner, for violation of bond executed under Section 110 Cr.P.C. Reading of the order shows that there is complete non-application of mind. It has been stated that after executing the bond a case in Crime No.118 of 2022 has been registered on the file of the second respondent on 15.08.2022 for the offence punishable under Section 8(c) r/w 20(b)(ii)(B) & 29(1) of NDPS Act alleging that the petitioner was involved in illegal transportation of Ganja and on 06.09.2022 this order has been passed by the first respondent imposing sentence of punishment of imprisonment, which is not reasonable and proper. According to the learned counsel for the petitioner, before passing the above said order, no enquiry was undertaken as contemplated under Section 122(1)(b) of Cr.P.C.

3.Even though in unnumbered paragraph it has been observed by the

first respondent to the effect that sufficient opportunity was given to the revision petitioner to engage Advocate and defend him and the learned Additional Public Prosecutor would submit that on the date of production of the revision petitioner before the respondent, the statement was recorded and the order has been passed on the very same date. Perusal of Enquiry file shows that no sufficient opportunity was given to the revision petitioner.

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 order dated 06.09.2022, passed by the 1<sup>st</sup> respondent/2<sup>nd</sup> Class Executive Magistrate/Revenue Tahsildar, Andipatti, Theni District, in Na.Ka.No.6650/2022/A4, 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.

**28.10.2022**

Index : Yes / No  
Internet : Yes / No  
TM

To

- 1.The II Class Executive Magistrate cum Revenue Tahsildar,  
Andipatti, Theni District.
- 2.The Inspector of Police, Varushanadu Police Station, Varusanadu.
- 3.The Superintendent of Prison, District Jail, Theni.
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

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**G.ILANGOVAN,J.**

TM

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