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Crl.R.C.(MD).No.1053 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2022

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.1053 of 2022
and Crl.M.P.(MD).No.13290 of 2022

Sudharson

.. Petitioner

Vs.

1.The Sub Divisional Magistrate/Revenue Divisional Officer,
Thoothukudi,
Thoothukudi District.
Aa1/110/M.C.No.228/2022.

2.The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi 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 in Aa1/110/M.C.No. 228/2022, dated 19.10.2022, on the file of the 1st respondent and set aside the same.

For Petitioner : Mr.R.Mariappan

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



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ORDER

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This Criminal Revision Case has been filed against the order passed by the first respondent in Aa1/110/M.C.No.228/2022, dated 19.10.2022.

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 19.10.2022 the above said order has been passed only based on the FIR in Crime No.460 of 2022 on the file of the second respondent registered for the offence punishable under Sections 8(c) r/w 20(b)(ii)(B) 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 18.10.2022 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.



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4.The learned counsel for the petitioner submitted that the first respondent has not given any notice to the petitioner. 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 passed by the first respondent in Aa1/110/M.C.No.228/2022, dated 19.10.2022, is hereby set aside. However, liberty is granted to the respondent herein to initiate fresh action,



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if so required, by following the procedure that has been set out in the above said Judgment. Consequently, connected miscellaneous petition is closed.

11.11.2022

Index : Yes / No
Internet : Yes / No
TM

To

- 1.The Sub Divisional Magistrate/Revenue Divisional Officer,
Thoothukudi,
Thoothukudi District.
Aa1/110/M.C.No.228/2022.
- 2.The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA,J.

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