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Crl.R.C.(MD).No.49 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.49 of 2023

Chinnavar @ Selvakumar

... Petitioner

Vs.

State rep. by

1.The Sub-Divisional Magistrate/
The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Aranthangi Taluk, Pudukottai District.

2.The Inspector of Police,
Aranthangi Police Station,
Pudukottai District.
(Crime No.732/2022)

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records connected with the order passed by the 1st respondent in M.C.No.03/2022/A5, order dated 26.12.2022 against the petitioner herein, who is now detained at Central Prison, Trichy and set aside the same as illegal.



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For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.R.Suresh Kumar
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed against the order passed by the first respondent in M.C.No.03/2022/A5, dated 26.12.2022.

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 26.12.2022 the above said order has been passed only based on the FIR in Crime No.732 of 2022 on the file of the second respondent registered for the offence punishable under Sections 5 & 7(3) of Lotteries Regulation Act and no enquiry was undertaken as contemplated under Section 122 (1)(b) of Cr.P.C.

3.The learned Government Advocate (Crl. side) appearing for the respondent submitted that the procedure has been followed properly. According to the learned Government Advocate (Crl. side), the petitioner was summoned and enquired and sufficient opportunity was given to him.



Though the petitioner has executed sureties before the first respondent, he again involved in Crime. Therefore, the impugned order has been passed by the first respondent.

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



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accordingly, allowed and the order passed by the first respondent in M.C.No.03/2022/A5, dated 26.12.2022, is hereby set aside. 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. He may be released from the prison, if not required in any other case.

02.02.2023

Index : Yes / No
Internet : Yes / No
TM

To

- 1.The Sub-Divisional Magistrate/
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Office of the Revenue Divisional Officer,
Aranthangi Taluk, Pudukottai District.
- 2.The Inspector of Police,
Aranthangi Police Station,
Pudukottai District.
(Crime No.732/2022)
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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