



Crl.O.P.(MD)No.4968 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **23.03.2023**

CORAM:

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

Crl.O.P.(MD) No.4968 of 2023

Muthu @ Muthar

... Petitioner/Sole Accused

Vs.

1.The Executive Magistrate cum
Deputy Commissioner of Police (West),
Tirunelveli City,
Tirunelveli.

2.The State rep. by
The Inspector of Police,
Pettai Police Station,
Tirunelveli.
Crime No.(LIR.No.19/2022)

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the order, dated 28.02.2023 in suspend the sentence petition in Cr.M.P.No.2451 of 2023 in Crl.R.C.No. 12 of 2023 by the learned Principal District Court, Tirunelveli and set aside the same and release the petitioner in bail.

For Petitioner : Mr.V.M.Jegadeesha Pandian

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order, dated 28.02.2023
in suspend the sentence petition in Cr.M.P.No.2451 of 2023 in



CrI.O.P.(MD)No.4968 of 2023

CrI.R.C.No.12 of 2023 by the learned Principal District Court, Tirunelveli and release the petitioner in bail.

2.The proceedings has been initiated under Section 122 (1) (b)Cr.P.C., stating that this petitioner is involved in offences and disturbed the public peace. Reading of the order shows that there is complete non-application of mind. It has been stated that on 15.02.2023 the above said order has been passed only based on the FIR in Crime No. 08 of 2023 on the file of the second respondent registered for the offence punishable under Sections 392, 397 of IPC and no enquiry was undertaken as contemplated under Section 122 (1)(b) of Cr.P.C. Challenging the same, the petitioner has filed a revision before the learned Principal District Judge, Tirunelveli, along with a miscellaneous petition seeking suspension of sentence in CrI.M.P.No.2451 of 2023. The revisional Court dismissed the miscellaneous petition on 28.02.2023. To set aside the same, the petitioner has come forward with this original petition. He also prays to release him on bail.

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 15.02.2023 and sufficient opportunity was



given to him. Though the petitioner has executed sureties before the first respondent, he again involved in the offences, thereby disturbing the public peace. Therefore, the impugned order has been passed by the first respondent and the revisional Court has rightly dismissed the petition filed by the petitioner.

4. Whether the Deputy Commissioner of Police can exercise the jurisdiction of the Revenue Divisional Officer, came up for consideration before this Court in more than one occasions. The above said issue was also referred to the Larger Bench for decision in the Judgment reported in ***Devi Vs. Executive Magistrate cum Deputy Commissioner of Police and another*** in ***Crl.R.C.No.78 of 2020***.

5. Now the above said reference has been answered by the Division Bench stating that the Deputy Commissioner of Police has no right to hold the position of Executive Magistrate.

6. Apart from that the learned counsel for the petitioner relied upon the guidelines issued by this Court in a decision 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



WEB COPY



CrI.O.P.(MD)No.4968 of 2023

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.”

7.In view of the above, this petition is liable to be allowed and accordingly, **allowed** and the order passed by the revisional Court namely the Principal District Court, Tirunelveli, in Crl.M.P.No.2451 of 2023 in Crl.R.C.No.12 of 2023, dated 28.02.2023, is hereby set aside and consequently, the order passed by the first respondent on 15.02.2023, in EMC No.(W) No.90/Sec/Pre/DC(W)/Tin-c-/w2022, stands nullified. 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. The petitioner may be released from the prison, if not required in any other case.

23.03.2023

Index : Yes/No
Internet : Yes/No
TM



Crl.O.P.(MD)No.4968 of 2023

To

WEB COPY

- 1.The Executive Magistrate cum
Deputy Commissioner of Police (West),
Tirunelveli City,
Tirunelveli.
- 2.The State rep. by
The Inspector of Police,
Pettai Police Station,
Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.4968 of 2023

G.ILANGO VAN. J.

TM

Crl.O.P.(MD)No.4968 of 2023

23.03.2023