2022 INSC 286

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 388 OF 2022
(ARISING OUT OF SLP (CRL.) NO. 8438 OF 2021)

DEVADASSAN …APPELLANT

Versus

THE SECOND CLASS EXECUTIVE MAGISTRATE, RAMANATHAPURAM & ORS. ...RESPONDENT(S)

JUDGMENT

J.K. Maheshwari, J.

Leave granted.

2. Assailing the order dated 22.7.2021 passed in Criminal RC(MD) No. 379 of 2021 and Crl. MP (MD) No. 3829 of 2021 by the Madras High Court, Madurai Bench, confirming the order dated 13.5.2021 of the respondent No. 1 in MC No. 95 of 2021 (A3), the present appeal has been filed by the appellant.

3. The facts in brief are, the respondent No. 1 and the High Court found the appellant guilty for breach of the conditions of bond and punished him in exercise of power under Section 122(1)(b) of the Code of Criminal Procedure (in short "Cr.P.C."). The orders impugned indicate that the appellant was

indulged in criminal activities, however, the respondent No. 1 after notice and affording opportunity, passed order on 24.2.2021 under Section 117 read with Section 110(e) Cr.P.C.. In compliance, the appellant executed a bond to maintain good behaviour and peace for a period of one year and also undertook to pay Rs. 50,000/- as penalty to the Government in case of breach or else face the proceedings under Section 122(1)(b) Cr.P.C. Even on execution of bond, he was found involved in an offence of commission of murder, registered by Uchipuli Police Station as Crime No. 149 of 2021 under Sections 147/148/342/302 read with 109/120(B) IPC. The respondent No. 1 vide order dated 13.5.2021 found him guilty for breach of bond however, ordered his arrest and sent him to the custody. The said order has been affirmed by the High Court, however, this appeal has been filed challenging both the orders.

4. Shri A. Velan, learned counsel appearing for the appellant has strenuously urged that the orders passed by the administrative authorities usually do not follow the procedure prescribed and afford reasonable opportunity. The High Court of Delhi in the case of ***Aldanish vs. State of NCT of Delhi*** 2018

SCC online Del 12207 issued the guidelines to impart training to these officers. Reliance has also been placed on the judgment of Madras High Court in the case of ***Devi vs. Executive Magistrate*** (Mad HC) 2020 SCC online Mad 2706, wherein the High Court taking a different view from the previous judgment directed to place the matter before Hon'ble the Chief Justice for constituting the Division Bench to hear the similar issue. Learned counsel has also placed reliance on a judgment of this Court in ***Prem Chand vs. Union of India*** (1981) 1 SCC 639 specifying the manner, in which the police personnel must act upon, but the personal liberty cannot be put into peril on their mercy. Further, placing reliance on the judgment of this Court in the case of ***Gopalanachari vs. State of Kerala*** 1980 (Supp) SCC 649, learned counsel emphasized the importance of Article 21 of the Constitution of India and its significance. In view of the said submissions, imposition of conditions in the bond without due enquiry and affording reasonable opportunity is wholly unjustified, and appellant cannot be held guilty and may be sent to the custody unceremoniously.

5. On the other hand, Dr. Joseph Aristotle S., learned counsel representing the respondents contends that eight criminal cases were pending against the appellant, therefore bond of good behaviour was taken in exercise of the power under Section 117 Cr.P.C. asking security. On violation of the said bond, by virtue of the powers conferred under Section 122(1)(b) Cr.P.C., the order impugned has rightly been passed. It is urged that Chapter VIII of Cr.P.C. confer powers to the Executive Magistrate for taking bond to keep the peace and security for good behaviour from the suspected persons. Appellant gave the undertaking on breach of conditions of bond due to which he may be dealt with as per Section 122(1)(b) Cr.P.C. Later, appellant was found involved in an offence of commission of murder, however a show cause notice was issued fixing date for appearance on 7.5.2021. In the reply filed by appellant, execution of the bond has not been disputed and making him accused in a murder case has also not been denied, except to controvert that without proving guilt, he may not be responsible for the said act. The competent authority affording opportunity to the appellant, has rightly passed the order on 13.5.2021 on

establishing violation of the terms of the bond executed on 24.2.2021 by the appellant. It is urged procedure as contemplated has been followed by the respondents, however, interference was not called by the High Court, to which interference under Article 136 of Constitution is not warranted.

6. After hearing learned counsel for the parties and on perusal of record, it appears that from 2012 to January, 2021, eight criminal cases were registered against the appellant, including of simple and grievous hurt, theft and also under the Arms Act. After the report received from the respondent No. 2, a show cause notice was issued to the appellant and enquiry was conducted by respondent No. 1. In furtherance thereto, his statement was recorded and the response had also been taken. The respondent No. 1 recorded the satisfaction that the appellant might cause breach of peace in the locality, however directed him to furnish a bond to the sum of Rs. 50,000 without surety for a period of one year under Section 117 Cr.P.C., failing which he may serve the imprisonment under Section 122(1)(a) Cr. P.C. or in case of breach of conditions, recourse of Section 122(1)(b) Cr.P.C. may be taken. The contents of the

bond executed by the appellant are relevant hence reproduced as under:

> "MC No. 95/2021
>
> **ORDER MADE U/S 117 CR.P.C. READ WITH 110(E) CR.P.C.**
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> This case was initiated in the court of 2nd Class Magistrate and Tahsildar, Ramanathapuram on the basis of case registered in Uchipuli Police Station. This person was produced before this Court on 24.2.2021. Enquiry was conducted in the court and the provisions mentioned in show cause notice issued was explained to DEVADHASAN 28/21, S/O DEIVENTHIRAN, MARAVETTIVALASAI, in detail statement and arguments of the parties were taken.
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> Considering all these facts and the information received from inquiry, this Court has arrived at the conclusion at the person Name Devadhasan 28/21, s/o DEIVENTHIRAN is likely to create Breach of Peace in the locality and therefore shall be bound u/s 117 Cr.P.C. by using a bond for Rs. 50,000/- without sureties, for a period of one year from.
>
> Thus, this Court of Second Class Ex. Magistrate and Tahsildar, Ramanathapuram hereby ordered to execute a Bond for Rs. 50000/- without sureties, for a period of 1 year from 24.2.2021 failing which he shall serve imprisonment for the above mentioned u/s 122(1)(a) in case of breach conditions during the period of bond the individual state be imprisonment for the remaining period u/s 122 (1)(b).
>
> Sd/-
> Second Class Magistrate
> & Tahsildar
> Ramanathapuram"

7. After execution of bond, on 31.3.2021 Crime No. 141 of 2021 was registered joining the appellant as co-accused for the offences under Sections 147/148/342/302 r/w 109/120(B) IPC

at P.S. Uchipuli, Ramanathapuram and breached the terms and conditions of the bond. A show cause notice was issued asking the response and also sought appearance of appellant before the respondent No. 1 on 7.5.2021. He submitted his explanation and his statement was recorded. The respondent No. 1 affording opportunity passed the order on 13.5.2021 holding the appellant guilty for violation of the terms and conditions of the bond and punished under Section 122(1)(b) Cr.P.C. In pursuance of the order, he is arrested and sent to prison. It is to observe that Chapter VIII of Cr.P.C. confer powers to the Executive Magistrate to take bond for maintaining security and for keeping the peace and good behaviour by the citizens. As per Section 107 Cr.P.C, on receiving the information, that any person is likely to commit a breach of peace or disturb the public tranquility or to do any wrongful act, the Executive Magistrate may have power to show cause on violation of the terms of the bond so executed for maintaining peace. As per Section 108 of Cr.P.C., similar power has been given for maintaining the security for good behaviour from persons disseminating seditious matters. Similarly, to take security for good behaviour

from suspected persons and habitual offenders, powers under Sections 109 and 110 Cr.P.C. have been conferred upon the Executive Magistrate. In the present case, the order was passed under Sections 111 and 117 Cr.P.C. for security. On violation, recourse, specified under Section 122 Cr.P.C. is permissible. Therefore, the Legislature introduced the said Chapter conferring powers on the authorities to take action for violation of peace and tranquility in public order by the citizens of the locality, otherwise, by following the procedure as prescribed, the action may be taken by the competent authority.

8. Learned counsel for the appellant has heavily relied upon the directions issued by the Delhi High Court as well as Madras High Court in the cases of ***Aldanish*** & ***Devi*** (supra) emphasizing in general that the administrative officers do not follow the procedure, so prescribed and also relied upon the judgment of ***Gopalanachari*** (supra) emphasizing the importance of Article 21 of the Constitution of India affecting personal liberty of the citizens. But, in the facts of the case at hand, nothing has been brought on record that how and in what manner the procedure contemplated under Chapter VIII of

Cr.P.C. has not been followed. It is a trite law that by following the procedure established by law, the personal liberty of the citizens can be dealt with. Looking to the facts of this case, the bond executed by the appellant on 24.2.2021 under Section 110 read with Section 117 Cr.P.C. has been violated by him on account of his involvement in a criminal case, registered subsequently. In the present case, the bond executed by the appellant has not been questioned. In fact, the subsequent action of passing the order dated 13.5.2021 sending him to the custody due to violation of the bond as per the mandate of law has been assailed. As per the discussion made hereinabove, in our considered opinion, the order passed by respondent No. 1 is after following the procedure, so prescribed and affording due opportunity to the appellant. The High Court has rightly affirmed the said order. In the facts, the argument advanced by the learned counsel for the appellant cannot be countenanced.

9. In view of the discussion made hereinabove, we are of the considered view that the orders passed by the High Court and respondent No. 1 do not call for any interference. Therefore, this appeal is bereft of any merit, hence dismissed.

.....J.
[INDIRA BANERJEE]

.....J.
[J.K. MAHESHWARI]

NEW DELHI;
MARCH 9, 2022.