

IN THE COURT OF THE PRINCIPAL SESSIONS JUDGE AT
ADILABAD

Present:- Dr.Ch.V.R.R. Varaprasad,
Principal Sessions Judge,
Adilabad.

Monday, this the 8th day of May 2023

CRIMINAL REVISION PETITION No.15 of 2022

[Against order dated 17.08.2022 passed by the Mandal Executive
Magistrate and Tahsildar, Boath in MC.No.A/269/2022]

Between:

Katare Dasharath, S/o Year @ Hira, Age:45 years,
Caste:Mathura (Chambar), Occ:Coolie, R/o
Village:Sonala, Mandal:Boath, Dist.Adilabad.

... Revision Petitioner

AND

The State of TS through Proh. & Excise Station,
Echoda.

... Respondent

This petition has been finally heard on 05.05.2023 in the presence of Sri C.Indal Singh, Advocate for the Revision Petitioner and of Sri.Sanjay Kumar Vairagare, Additional Public Prosecutor for the State, upon perusing the material available on record and having stood over for consideration this Court made the following :-

ORDER

1. Being aggrieved by the order dated 18.08.2022 in MC.No.A/269/2022 passed by the learned Mandal Executive Magistrate, Boath, this revision petition has been filed by revision petitioner praying the court to set aside the said order.

2. It is mentioned in the petition that the learned Executive Magistrate, Boath has passed the order under revision directing for

detention of revision petitioner in jail till 21.04.2023 from 17.08.2022 on the ground that he has violated the conditions of bond for Rs.1,00,000/- for good behaviour executed by him in COR.No.54/2022. It is also mentioned in the petition that revision petitioner was arrested in COR.No.91/2022 and he was given notice under Section 41 of Cr.P.C. Learned Executive Magistrate failed to appreciate the fact that the revision petitioner was produced before him under Section 110 of the Code of Criminal Procedure. The learned Executive Magistrate, Boath reached erroneous conclusion and passed the order under revision which is not sustainable and liable to be set aside, otherwise irreparable loss would be caused to revision petitioner.

3. Having received notice, Sri.Sanjay Kumar Vairagare, learned Additional Public Prosecutor representing the respondent, reported no counter but orally opposed the petition.

4. No oral or documentary evidence is adduced by either side in this revision petition.

5. Heard Sri C.Indal Singh, learned counsel for revision petitioner and Sri Sanjay Kumar Vairagare, learned Additional Public Prosecutor.

6. The point that arises for determination is:

Whether order dated 17.08.2022 in MC.No.A/269/2022 of the learned Mandal Executive Magistrate, Boath suffers from any infirmity and, if so, whether it is liable to be set aside, as prayed for?

POINT:-

7. It is an admitted fact that revision petitioner was bound over in COR.No.54/2022 before the learned Executive Magistrate, Boath for security for good behaviour and revision petitioner executed bond for Rs.1,00,000/- undertaking that he would maintain good behaviour from 22.08.2022 to 21.04.2023 and in case of violation of these conditions of said bond he has agreed to pay Rs.1,00,000/- to the government. Despite execution of the said bond, accused alleged to have committed offence again and indulged in an offence under Section 34(a) of the Telangana State Excise Act in COR.No.91/2022 dated 30.06.2022. That was the reason why the SHO, Prohibition and Excise Station, Echoda moved the learned Executive Magistrate, Boath Mandal to take action against revision petitioner and accordingly the order under revision came to be passed by the learned Executive Magistrate.

8. Revision petitioner was directed to be in prison from 17.08.2022 to 21.04.2023. While the revision petitioner was in jail the present revision petition has been preferred by him. In Cr.MP.No.105/2022 in Crl.RP.No.15/2022 this court has suspended the sentence imposed by the

learned Executive Magistrate, Boath, pending disposal of this revision petition, and directed his release from jail on his executing personal bond for Rs.10,000/- with one surety for the likesum. The said order was passed on 15.11.2022. It is admitted by both sides that pursuant to the said order surety was produced by revision petitioner and he was released on bail. From the case record, it is clear that revision petitioner was in jail from 17.08.2022 till 15.11.2022 i.e. for nearly 3 months.

9. Learned counsel for revision petitioner contended that the order under revision is not sustainable on the ground that the principles of natural justice have been violated and no notice was issued to revision petitioner before passing the order under revision. On the other hand, learned Additional Public Prosecutor contended that with detailed reasons order under revision has been passed and it has to be upheld.

10. One cannot deny that during the subsistence of the order under revision, the present revision petition has been filed by revision petitioner and pending disposal of the revision petition he was ordered to be released on condition of furnishing bond for Rs.10,000/- with one surety. Merely because the date 21.04.2023 was fixed in the order under revision, it cannot be said that the revision petition has become infructuous. Court has to examine the legality or otherwise of the order under revision.

11. The main genesis for passing the order under revision is that revision petitioner is a habitual offender in excise cases. As per the record, revision petitioner was accused in COR.No.54/2022 of Prohibition and Excise Station, Echoda. During the subsistence of the bond executed by revision petitioner, undertaking to maintain good behaviour, he alleged to have again committed the offence under Section 34(a) of the Telangana State Excise Act in COR.No.91/2022 and that was the reason why the order under revision came to be passed against revision petitioner.

12. The file produced before the court shows that having received notice revision petitioner appeared before the learned Executive Magistrate on 15.07.2022, on which date he has requested the learned Executive Magistrate to reduce the penalty amount but it was not considered on the ground that he was not competent to do so. For second time finally notice was issued to revision petitioner on 22.07.2022 but he did not turn up and accordingly the order under revision came to be passed. Though sufficient opportunity was given to the revision petitioner by the learned Executive Magistrate he did not make use of the same. Sufficient and full opportunity has been given to the revision

petitioner by learned Executive Magistrate before passing the order under revision. Court finds no illegality or irregularity in the order under revision and it needs no interference in the hands of this court.

13. Then comes the question whether the sentence of imprisonment for a period of 8 months against revision petitioner imposed by learned Executive Magistrate, Boath is reasonable, and if it is not reasonable, whether it needs to be reduced. Eight months imprisonment imposed by learned Executive Magistrate is too exorbitant. Except the two excise cases mentioned in the order under revision, there is no material before the court that revision petitioner is involved in other similar cases. There was also no record to show that first case against revision petitioner ended in conviction. As already stated, revision petitioner was already in jail for nearly 3 months. Court is of the considered opinion that the period of 3 months imprisonment already underwent by revision petitioner can be taken as sufficient punishment for violation of bond executed by revision petitioner. To that extent, court proceeds to modify the sentence imposed by the learned Executive Magistrate against revision petitioner. Point is accordingly answered in favour of revision petitioner in part.

14. **In the result**, Criminal Revision Petition is allowed in part holding that there is no illegally or irregularity in the order dated 17.08.2022 in MC.No.A1/269/2022 passed by the Mandal Executive Magistrate, Boath. However, the sentence of imprisonment imposed against revision petitioner from 17.08.2022 to 21.04.2023 is hereby set aside and 3 months imprisonment already undergone by revision petitioner is treated as appropriate and sufficient punishment to the revision petitioner for violation of bond executed by him.

Dictated to the Stenographer, transcribed and typed by her, corrected and pronounced by me in open Court, this the 8th day of May 2023.

PRINCIPAL SESSIONS JUDGE
ADILABAD