

**HEADING OF DECISION IN CRIMINAL REVISION:
IN THE COURT OF THE SESSIONS JUDGE:
CUTTACK.**

Present:

Shri Bidyut Kumar Mishra,
Sessions Judge, Cuttack.

Dated, the 17th day of February, 2022

Criminal Revision No. 13/2022

(Arising out of the order dtd.2.2.2022 passed
by the ADCP-Executive Magistrate, Cuttack
in Crl. Misc. Case No.1178 of 2021.)

Suman @ Choudhury Soumya Rn. Samal,
aged about 31 years, S/o Alekha Chandra Samal,
At-Jobra Malhasahi, PS. Malgodown,
Dist:Cuttack

... Petitioner.

-Versus-

State of Odisha. ... Opp.party.

Counsel for the Petitioner: Sri A.K.Patra & Associates.

Counsel for the Opp.party: Public Prosecutor.

Date of Argument - 14.02.2022

Date of Judgment - 17.02.2022

J U D G M E N T

The present revision is directed against the order
dtd. 2.2.2022 passed by the Addl. DCP-cum-Executive
Magistrate, Cuttack in Crl. Misc. Case No.1178 of 2021

arising out of Malgodown PS non-FIR No.22 dated 7.10.2021.

2. The Addl. DCP -cum- Executive Magistrate, Cuttack initiated the proceeding u/s.110 Cr.P.C on the basis of a prosecution report received from the IIC, Malgodown Police Station on 7.10.2021 against the petitioner. It is alleged that the present petitioner is habitual offender and the illegal activities of the delinquent are increasing day by day in Malgodown PS Jurisdiction which is very harmful to the society. After receiving the P.R he examined Sri D.Garnayak, the Sub-Inspector of Malgodown Police Station, UPD and on his prayer he issued production warrant against the petitioner as he was already in jail custody in connection with another Malgodown PS Case No.213 dated 6.10.2021 u/s 341/324/506/307/34 IPC. Accordingly, the petitioner was produced on 8.10.2021 when the substance of the P.R was read over and explained to him. Though the petitioner denied the allegation in the P.R the Executive Magistrate directed him to show-cause as to why he shall not execute a bond of Rs.10,000/- (Ten thousand only) each with two local fit & solvent sureties for the like amount to be of good behaviour for a period of one year. On 27.1.2022 the learned Counsel for the petitioner appeared and filed a petition with a prayer to drop the proceeding and also filed show cause denying the allegations made against him and after perusing the show-cause filed by the petitioner, the learned Executive Magistrate

without considering the petition called for a status report from the concerned police station regarding involvement of the delinquent in the cases mentioned in PR fixing the aforesaid Misc. Case to 11.2.2022 for submission of a report by the IIC, Malgodown PS regarding the matter. While the matter stood thus, again on 2.2.2022 the learned Counsel for the delinquent appeared and filed a petition with a prayer to release the delinquent-petitioner on the strength of PR Bond. But, the Executive Magistrate declined to consider the release of the petitioner on the strength of P.R. Bond and adjourned the case record to the date of posting i.e. on 11.2.2022 awaiting status report from the IIC, Malgodown PS regarding involvement of the delinquent in the cases mentioned in the PR and for further hearing of show cause and hence the order dated 2.2.2022 is impugned in this Revision.

3. Learned counsel for the petitioner submitted that after filing a show-cause by the petitioner the learned Executive Magistrate did not give him an opportunity of being heard and without any inquiry the Magistrate refused to release the petitioner on the strength of P.R. Bond which is illegal and beyond jurisdiction. He also submitted that without commencement of the inquiry and in order to keep the petitioner in custody for a long period awaiting report of the concerned police station is also equally illegal and without jurisdiction, and therefore, prayed to set aside the order and pass necessary orders for release of the petitioner.

On the other hand, learned P.P contended that the petitioner is a habitual offender and he is likely to commit similar offence which is dangerous for the society as a whole. He further contended that after getting satisfied that the P.R submitted by the IIC, Malgodown Police Station the learned Executive Magistrate has rightly passed order in declining the release of the petitioner on the strength of PR bond pending receipt of the status report from the IIC Malgodown P.S and as such there is no scope for interference in this Court in the impugned order.

Section 116 Cr.P.C reads as follows:

116. Inquiry as to truth of information.-(1) When an order under section 111 has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under Section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons cases.

(3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that-

- (a) no person against whom proceedings are not being taken under section 108, section 109 or section 110, shall be directed to execute a bond for maintaining good behaviour;
- (b) the conditions of such bond, whether as to the amount thereof or as to the provisions of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

Xx xx xx xx

4. In view of the aforesaid provision it is incumbent on the part of an Executive Magistrate to hold an inquiry of the allegations made in the P.R. before asking the delinquent to execute surety for good behaviour. It is also the settled principle of law that during inquiry an opportunity of being heard should be afforded to the delinquent and only after the inquiry and being satisfied with the evidence, the Executive Magistrate can pass order for executing surety by the delinquent for keeping good behaviour for certain period.

Section 117 of the Cr.P.C reads as follows:

117. Order to give security.- If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly.

Provided that-

- (a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111.
- (b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

5. The aforesaid provision reveals that the Executive Magistrate can direct the delinquent to execute a bond with or without surety only after proving the allegation against the delinquent in an inquiry conducted by him.

Reverting back to the case in hand, it is found from the record that after receiving of the P.R from the IIC, Malgodown, the Executive Magistrate examined Sri D.Garnayak, the Sub-Inspector namely of Malgodown Police Station who proved the contents of the P.R, but it is not understood that before initiation of proceeding u/s.110 Cr.P.C such a statement has been recorded in absence of the delinquent. Thereafter production warrant was issued against the delinquent and accordingly the delinquent-petitioner was produced before the Executive Magistrate on 8.10.2021 and before filing of the show-cause by the petitioner on the same date it is mentioned that the delinquent-petitioner neither prayed to release him on good behaviour bond nor executed any interim bond and hence the petitioner was detained in jail custody. However, on 27.1.2022 the learned Counsel for the petitioner appeared and filed a petition with a prayer to drop the proceeding and also filed show cause denying the allegations made against him and after perusing the show-cause filed by the petitioner, the learned Executive Magistrate

instead of considering the petition filed by the petitioner and without making any inquiry to the show caused filed by him on 27.1.2022 called for a status report from the IIC Malgodown PS regarding involvement of the delinquent in the cases mentioned in PR fixing the case to 11.2.2022 for submission of a report by the IIC, Malgodown PS and for hearing of the show cause. But the learned the learned Counsel for the delinquent again appeared on 2.2.2022 and filed a petition with a prayer to release the delinquent-petitioner on the strength of PR Bond, but, the Executive Magistrate declined to consider the release of the petitioner on the strength of P.R. Bond and adjourned the case to the date fixed i.e. on 11.2.2022 awaiting a report from the IIC Malgodown PS regarding his antecedents. But, the fact remains that neither any inquiry u/s.116 of the Cr.P.C was conducted nor any evidence was adduced in the case to prove the allegation against the petitioner mentioned in the P.R. In other words the requirements before passing an order u/s. 117 of the Cr.P.C. has not been fulfilled and without resorting to the procedure u/s.116 of the Cr.P.C., no order u/s.117 of the Cr.P.C can be passed against of the delinquent.

Therefore, in view of the aforesaid discussion, the Court is of the view that the order passed in declining the release of the petitioner on the strength of PR Bond awaiting a report from the IIC Malgodown PS and detained him inside the jail custody before initiation of inquiry u/s 116 Cr.P.C is

apparently illegal and without jurisdiction. A person cannot be detained indefinitely like this. Hence, the order passed on dtd.2.2.2022 is liable to be set aside and accordingly the same is hereby set aside. Consequently, it is also directed to release the petitioner forthwith on execution of PR Bond of Rs.20,000/- (Rupees twenty thousand only) with the condition that the petitioner shall appear in person or through his lawyer on each date of posting of the case till the inquiry is over without fail. Accordingly, the revision is allowed without cost.

Send back the LCR along with a copy of this order to the learned ADCP-cum-Executive Magistrate, Cuttack.

Sessions Judge, Cuttack.

This judgment is dictated, corrected and pronounced in the open Court on this the 17th day of February, 2022 under my hand and seal of this Court.

Sessions Judge, Cuttack.