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Crl.R.C.No.337 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.337 of 2023
and Crl.M.P.No.2701 of 2023

Parthiban

...

Petitioner

/vs/

1. The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Thiruttani,
Thiruvallur District.

2. The Inspector of Police (Law and Order)
Thiruttani Police Station,
Thiruvallur District

.. Respondents

Prayer : Criminal Revision Case filed under section 397(1) r/w 401 of Cr.P.C, to set aside the order dated 20.09.2022 passed by the 1st respondent in M.C.No.44 of 2021 in Na.Ka.No.3361/2022/A1 by Sub-Div.Mag cum R.D.O/Thiruttani/2022.

For petitioner

... Mr.G.P.Sivakumar

For Respondents

... Mr.R.Vinothraja,
Government Advocate (Crl.Side)



ORDER

Challenging the order dated 20.09.2022 passed by the 1st respondent in M.C.No.44 of 2021 in Na.Ka.No.3361/2022/A1, this Criminal Revision is filed by the petitioner.

2. The learned counsel for the petitioner would submit that the 1st respondent passed an order, by her proceedings in Na.Ka.No.3361/2022/A1 dated 20.09.2022 under Section 122(1) of Cr.P.C and after enquiry, passed an order under Section 122(1)(b) Cr.P.C and remanded the petitioner till 17.03.2023. This impugned order is unsustainable, in view of the judgment of the Division Bench of this Court dated **13.03.2023** in ***Cr.R.C.No.137 of 2018 batch cases***. Therefore, he seeks to set aside the impugned order passed by the 1st respondent.

3. The learned Government Advocate (Crl.Side) appearing for the respondents fairly conceded that the 1st respondent is not competent authority to pass an order under Section 122(1)(b) Cr.P.C.

4.I have considered the matter in the light of submissions of the learned counsel for the petitioner and the respondents.



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5. On perusal of the records and the impugned order, it reveals that the 1st respondent in pursuance of the complaint given by the 2nd respondent, Inspector of Police, Thiruthani Police Station, Thiruvallur District proceeded the proceedings against the petitioner under Section 110 Cr.P.C and directed to execute the bond with two sureties. Since the petitioner has violated the bond executed before the Executive Magistrate, the 1st respondent proceeded by him further under Section 122(1)(b) Cr.P.C and finally ordered to remand him till 17.03.2023. The impugned order passed by the 1st respondent dated 20.09.2022 in M.C.No.44 of 2021 in Na.Ka.No.3361/2022/A1 is unsustainable, in view of the order of the Division Bench of this Court dated **13.03.2023** in **Cr.R.C.No.137 of 2018 batch cases**, wherein, this Court relied on the judgement of the Hon'ble Supreme Court reported in **(1982) 1 SCC 71** [**Gulam Abbas Vs State of Uttar Pradesh**]. In paragraph 80 (e) of the said order dated 13.03.2023, it has been held as follows:-

*“80 (e) In the light of the law laid down in paragraph 24 of the three judge bench decision of the Supreme Court in **Gulam Abbas Vs State of Uttar Pradesh (1982) 1 SCC 71**, an Executive Magistrate cannot authorize imprisonment under Section 123(1)(b) for violation of a bond under Section 107 Cr.P.C. A person who has violated the bond executed before the Executive Magistrate*



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Crl.R.C.No.337 of 2022



under the said provision will have to be challenged or prosecuted before the Judicial Magistrate for inquiry and punishment under Section 122(1)(b)Cr.P.C”

5.In the light of the above, the 1st respondent is not competent authority to impose any punishment under Section 122(1)(b)Cr.P.C. Therefore, the impugned order passed by the 1st respondent is set aside and the Criminal Revision Case is allowed. No costs. Consequently, connected miscellaneous petition is closed.

17.03.2023

srn

Note : Issue order copy on 20.03.2023.

To

- 1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Thiruttani,
Thiruvallur District.
- 2.The Inspector of Police (Law and Order)
Thiruttani Police Station,
Thiruvallur District



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V.SIVAGNANAM, J.

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