



Crl.RC No.268 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.RC No.268 of 2023
& Crl.MP.No.8331 of 2023

Kozhi Raja @ Raja

... Petitioner

Vs.

1. The Executive Magistrate,
and Deputy Commissioner of Police,
North, Coimbatore City, Coimbatore.

2. Inspector of Police,
B-2, R.S.Puram (Law and Order) Police Station,
Coimbatore City.

3. The Superintendent,
Central Prison,
Coimbatore, Coimbatore District

... Respondents

Prayer: Criminal Revision Petition filed under Section 397 and 401 Cr.P.C. to set aside the order of detention dated 31.01.2023 passed in M.P.No.10/2022 in Na.Ka.No.300/NIR.SE.NADU/KA.THU.AA/(North) KO.MA/2022 by Executive Magistrate Cum Deputy Commissioner of



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Police, North Coimbatore City, allow this revision.

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For Petitioner : Mr.C.D.Sugumar

For Respondents : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

ORDER

This petition has been filed to set aside the order dated 31.01.2023 in M.P.No.10/2022 in Na.Ka.No.300/NIR.SE.NADU/KA.THU.AA/(North) KO.MA/2022 on the file of the first respondent.

2.The learned counsel for the petitioner would submit that after executing a bond under section 110 of C.P.C., for maintaining good behaviour for one year, a case has been registered against the petitioner in Cr.No. 222 of 2022 on 20.12.2022 for the offence under sections 448, 294(b), 323 and 506(ii) of I.P.C. Since the petitioner violated the bond condition, based on a complaint given by the 2nd respondent, the 1st respondent, proceeded against the petitioner and remanded the petitioner to prison by his proceedings under section 122(1)(b) of Cr.P.C. in



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M.P.No.10/2022 in Na.Ka.No.300/NIR.SE.NADU/KA.THU.AA/(North)

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KO.MA/2022 dated 31.01.2023 to undergo imprisonment until 18.10.2023.

3.He further submitted that 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 [P.Sathish @ Sathis Kumar Vs State Rep by The Inspector of Police, Law and Order, H-4 Korukkupet Police Station, Chennai]***, the impugned order passed by the 1st respondent is unsustainable, Therefore, he seeks to set aside the impugned order passed by the 1st respondent.

4.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.

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

6.On perusal of the records and the impugned order, it reveals that



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since the petitioner has violated the bond executed under Section 110 Cr.P.C, the 1st respondent proceeded against him under Section 122(1)(b) Cr.P.C and remanded him to undergo imprisonment for the remaining period of the bond till 18.10.2023.

7.It is relevant to note that in the common judgment passed by a Division Bench of this Court dated **13.03.2023** in **Cr.R.C.No.137 of 2018 batch cases [P.Sathish @ Sathis Kumar Vs State Rep by The Inspector of Police, Law and Order, H-4 Korukkupet Police Station, Chennai]**, 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 v State of Uttar Pradesh (1982) 1 SCC 71, an Executive Magistrate cannot authorize imprisonment under Section 122(1)(b) for violation of a bond under Section 107 Cr.P.C. A



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person who has violated the bond executed before the Executive Magistrate under the said provision will have to be challaned or prosecuted before the Judicial Magistrate for inquiry and punishment under Section 122(1)(b) Cr.P.C. ”.

8.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, dated 31.01.2023 passed by the 1st respondent is set aside and the Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

20.06.2023

Index:Yes/No
Internet:Yes/No

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V.SIVAGNANAM, J.

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To

1. The Executive Magistrate,
and Deputy Commissioner of Police,
North, Coimbatore City, Coimbatore.
2. Inspector of Police,
B-2, R.S.Puram (Law and Order) Police Station,
Coimbatore City.
3. The Superintendent,
Central Prison,
Coimbatore, Coimbatore District
4. The Public Prosecutor, High Court, Madras.

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