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Crl.R.C.No.594 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.R.C.NO.594 OF 2023
AND CRL.M.P.NO.4392 OF 2023

Sharukan

... Petitioner

Vs.

1.The Administrative Executive Magistrate /
Deputy Commissioner of Police (South)
Coimbatore, Coimbatore District.

2.State Rep. By
Inspector of Police
D3, Pothanoor Police Station
Coimbatore District.

... Respondents

PRAYER: Criminal Revision Case filed under section 397 r/w 401 of Criminal Procedure Code to set aside and revise the order dated 14.01.2023 passed by the 1st respondent / Administrative Executive Magistrate and Deputy Commissioner of Police, South, Coimbatore in M.P.No.02 of 2023 in Na.Ka.No.17/Nir.Se.Nadu/Kaa.thu.AA(South) Co.Ma/2023 pursuant to the Crime No.696/2022 under Section 392 IPC dated 13.11.2022 and Crime No.697/2018 under Sections 342, 392, 397, 506(II) IPC dated 14.11.2022 on the file of D3 Pothanoor Police Station, Coimbatore District.

For Petitioner	...	Mr.N.Chinnaraj
For Respondents	...	Mr.R.Vinothraja
		Government Advocate (Crl.Side)



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ORDER

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Challenging the order dated 14.01.2023 passed by the first respondent under Section 122 (1)(b) of Criminal Procedure Code in M.P.No.02 of 2023 in Na.Ka.No.17/Nir.Se.Nadu/Kaa.thu.AA(South) Co.Ma/2023 pursuant to the Crime No.696/2022 under Section 392 IPC dated 13.11.2022 and Crime No.697/2018 under Sections 342, 392, 397, 506(II) IPC dated 14.11.2022, on the file of D3 Pothanoor Police Station, Coimbatore District, this Criminal Revision is filed by the petitioner.

2.The learned counsel for the petitioner would submit that the first respondent passed an order dated 14.01.2023 in M.P.No.02 of 2023 in Na.Ka.No.17/Nir.Se.Nadu/Kaa.thu.AA(South) Co.Ma/2023, under Section 122(1)(b) Cr.P.C, pursuant to Crime No.696/2022 under Section 392 IPC dated 13.11.2022 and Crime No.697/2018 under Sections 342, 392, 397, 506(II) IPC dated 14.11.2022 on the file of the second respondent police and remanded the petitioner till 14.10.2023. This impugned order is unsustainable, in view of the order of the Division Bench of this Court in ***P.SATHISH @ SATHISH KUMAR AND OTHERS VS. THE STATE REP. BY THE INSPECTOR OF POLICE AND OTHERS [CRL.R.C.***



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NO.137 OF 2018 AND ETC., BATCH CASES, DECIDED ON

13.03.2023]. Therefore, he seeks to set aside the impugned order passed by the first respondent.

3.The learned Government Advocate (Criminal Side) appearing for the respondents fairly conceded that the first respondent is not the 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.

5.On perusal of the records and the impugned order, it reveals that the first respondent in pursuance of the complaint given by the second respondent, Inspector of Police, D3 Pothanoor Police Station, Coimbatore District, has proceeded to initiate 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 first respondent proceeded against him further under



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Section 122(1)(b) Cr.P.C and finally ordered to remand him till 14.10.2023. The impugned order dated 14.01.2023 passed by the first respondent in M.P.No.02 of 2023 in Na.Ka.No.17/Nir.Se.Nadu/Kaa.thu. AA(South) Co.Ma/2023, under Section 122(1)(b) Cr.P.C, is unsustainable, in view of the order of the Division Bench of this Court in ***P.SATHISH @ SATHISH KUMAR CASE (cited supra)*** wherein, in paragraph 80 (e), this Court, relied on a judgment of the Hon'ble Supreme Court in ***GULAM ABBAS VS STATE OF UTTAR PRADESH [1982] 1 SCC 71*** has 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 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”*



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

29.03.2023

Internet : Yes/No

Speaking / Non-speaking order

Note : Issue order copy on 31.03.2023.

TK

To

1. The Administrative Executive Magistrate /
Deputy Commissioner of Police (South)
Coimbatore, Coimbatore District.

2. The Inspector of Police
D3, Pothanoor Police Station
Coimbatore District.

3. The Superintendent
Central Prison, Coimbatore.

4. The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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V.SIVAGNANAM, J.

TK

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