



Crl.R.C.No.548 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.548 of 2023
and Crl.M.P.No.4103 of 2023

Sanjey @ Sanjey Kumar

... Petitioner

Vs.

1. The State Rep by
The Sub-Divisional Magistrate cum
Revenue Divisional Officer,
Tiruthani, Tiruvallur District.

2. Inspector of Police,
D-1, Tiruthani Police Station,
Tiruvallur District.

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., to set aside the conviction order imposed against the petitioner namely Sanjey @ Sanjey Kumar, M/A, 20 years, S/o.Senthilkumar in Na.Ka.2672/2022/A1 in M.C.No.84 of 2020 dated 30.08.2022 and revise the conviction period imposed till 23.06.2023 on the file of the 1st respondent herein.

For Petitioner : Mr.P.Surendran

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



ORDER

Challenging the order dated 30.08.2022 passed by the 1st respondent in Na.Ka.2672/2022/A1 in M.C.No.84 of 2020, 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.2672/2022/A1, dated 30.08.2022 under Section 122(1) (b) of Cr.P.C and after enquiry, passed an order under Section 122(1)(b) Cr.P.C and remanded the petitioner till 23.06.2023. 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 [P.Sathish @ Sathis Kumar Vs State Rep by The Inspector of Police, Law and Order, H-4 Korukkupet Police Station, Chennai]***. 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.

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, D-1, Tiruthani Police Station, Tiruvallur 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 against him under Section 122(1)(b) Cr.P.C and finally ordered to remand him till 23.06.2023. The impugned order dated 30.08.2022 passed by the 1st respondent in Na.Ka.2672/2022/A1 in M.C.No.84 of 2020, 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 [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 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”*

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. Consequently, connected miscellaneous petition is closed.

21.03.2023

srn

Note : Issue order copy on 23.03.2023.



WEB COPY

To

1. The Sub-Divisional Magistrate cum
Revenue Divisional Officer,
Tiruthani, Tiruvallur District.

2. Inspector of Police,
D-1, Tiruthani Police Station,
Tiruvallur District.

3. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.



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V.SIVAGNANAM, J.

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