



Crl.R.C.No.524 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.524 of 2023
and Crl.M.P.No.4001 of 2023

Rasaiyyah

... Petitioner

/vs/

1. The Executive Magistrate cum Deputy Commissioner of Police,
Washermentpet District, Chennai.

2. The State Represented by
The Inspector of Police (Law & Order),
H-8, Thiruvottiyur Police Station,
Chennai-600 019.

... Respondents

Prayer : Criminal Revision Case filed under section 397 r/w 401 of Cr.P.C, to set aside the order dated 09.01.2023 u/s.122 (1)(b) of Cr.P.C., in M.P.No.01 of 2023 in M.C.No.1592/Sec.Pro/DCP-WPT/2022 in H-8, Thiruvottiyur P.S., LIR No.248/2022 u/s.110 of Cr.P.C. (On the file of the Executive Magistrate cum Deputy Commissioner of Police, Washermenpet District) to undergo Imprisonment of 303 days.

For petitioner ... Mr.M.Illiyas
For Respondents ... Mr.R.Vinothraja,
Government Advocate (Crl.Side)

ORDER

Challenging the order dated 09.01.2023 passed by the 1st respondent in

M.P.No.01 of 2023 in M.C.No.1592/Sec.Pro/DCP-WPT/2022 in H-8,



Thiruvottiyur P.S., LIR No.248/2022, 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 his proceedings in M.P.No.01 of 2023 in M.C.No.1592/Sec.Pro/DCP-WPT/2022 in H-8, Thiruvottiyur P.S., LIR No.248/2022, dated 09.01.2023 under Section 122(1) of Cr.P.C and remanded the petitioner to undergo imprisonment for 303 days. 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.



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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 (Law and Order), H-8, Tiruvottiyur Police Station, Chennai 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 to undergo imprisonment for 303 days. The impugned order passed by the 1st respondent dated 09.01.2023 in M.P.No.01 of 2023 in M.C.No.1592/Sec.Pro/DCP-WPT/2022 in H-8, Thiruvottiyur P.S., LIR No.248/2022 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:-



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*“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”*

6.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. The Superintendent of Prison, Central Prison, Puzhal, Chennai is directed to release the petitioner forthwith, if his detention is no longer required in any other case. Consequently, connected miscellaneous petition is closed.

21.03.2023

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To

1. The Executive Magistrate cum Deputy Commissioner of Police,
Washermentpet District, Chennai.
2. The Inspector of Police (Law & Order),
H-8, Thiruvottiyur Police Station,
Chennai-600 019.
3. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.



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V.SIVAGNANAM, J.

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