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CrL.R.C.No.598 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.598 OF 2023**

Abdul Razzaq

... Petitioner

***Vs.***

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

2.The Inspector of Police  
T4, Kuniyamuthur Police Station (Law and Order)  
Coimbatore City.

... Respondents

**PRAYER:** Criminal Revision Case filed under section 397 r/w 401 of Criminal Procedure Code to set aside the order dated 08.02.2023 in M.P.No.04 of 2023 in Na.Ka.No.252/Admin Exe Mag/DC/South/CBE-C/2023 passed by the Administrative Executive Magistrate & Deputy Commissioner of Police – South, Coimbatore City, the first respondent herein.

|                 |     |                                |
|-----------------|-----|--------------------------------|
| For Petitioner  | ... | Mr.A.Tamilarasan               |
| For Respondents | ... | Mr.R.Vinothraja                |
|                 |     | Government Advocate (Crl.Side) |



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## **ORDER**

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Challenging the order dated 08.02.2023 passed by the first respondent under Section 122 (1)(b) of Criminal Procedure Code in M.P.No.04 of 2023 in Na.Ka.No.252/Admin Exe Mag/DC/South/CBE-C/2023, pursuant to the Crime No.275/2022 under Section 8(c) read with 20(b)(ii) NDPS Act and Section 294(b), 323 and 506(II) IPC dated 17.09.2022, on the file of T4, Kuniamuthur Police Station (Law & Order) Coimbatore City and in Crime No.109/2023 under Section 8(c) read with 20(b)(ii)(a), 25 of NDPS Act and Section 328 IPC dated 23.01.2023, on the file of Prohibition Enforcement Wing, Coimbatore City, 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 08.02.2023 in M.P.No.04 of 2023 in Na.Ka.No.252/Admin Exe Mag/DC/South/CBE-C/2023, under Section 122(1)(b) Cr.P.C, pursuant to the Crime No.275/2022 under Section 8(c) read with 20(b)(ii) NDPS Act and Section 294(b), 323 and 506(II) IPC dated 17.09.2022, on the file of T4, Kuniamuthur Police Station (Law & Order) Coimbatore City and pursuant to Crime No.109/2023 under



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Section 8(c) read with 20(b)(ii)(a), 25 of NDPS Act and Section 328 IPC

dated 23.01.2023, on the file of Prohibition Enforcement Wing, Coimbatore City and remanded the petitioner till 16.09.2023. 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. 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



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respondent, Inspector of Police, T4 Kuniamuthur Police Station (Law &

Order) Coimbatore City and the Prohibition Enforcement Wing,

Coimbatore City, 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 Section 122(1)(b) Cr.P.C and finally ordered to remand him till

16.09.2023. The impugned order dated 08.02.2023 passed by the first

respondent in M.P.No.04 of 2023 in Na.Ka.No.252/Admin Exe

Mag/DC/South/CBE-C/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”*

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.

**29.03.2023**

Internet : Yes/No  
Speaking / Non-speaking order  
**Note : Issue order copy on 31.03.2023.**  
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**V.SIVAGNANAM, J.**

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To

- 1.The Administrative Executive Magistrate /  
Deputy Commissioner of Police (South)  
Coimbatore City.
- 2.The Inspector of Police  
T4, Kuniamuthur Police Station (Law and Order)  
Coimbatore City.
- 3.The Superintendent  
Central Prison, Coimbatore.
- 4.The Public Prosecutor  
High Court of Madras  
Chennai – 600 104.

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