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Crl.R.C.No.572 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.SIVAGNANAM

Crl.R.C.No.572 of 2023
and Crl.M.P.No.4278 of 2023

Narendiran @ Nandhu

... Petitioner

Vs.

1. The Executive Magistrate cum Deputy
Commissioner,
Kilpauk District, Chennai.

2. The Inspector of Police,
G-2, Periyamet Police Station,
Chennai

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 r/w Section 401 Cr.P.C., to call for the records relating to the order passed in M.P.No.06 of 2023 in R.C.No.350/Sec.Pro/DCP/Kilpauk/2022 dated 21.02.2023 by the 1st respondent and set aside the same.

For Petitioner : Mr.A.Saranraj

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



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ORDER

Challenging the order dated 21.02.2023 passed by the 1st respondent in M.P.No.06 of 2023 in R.C.No.350/Sec.Pro/DCP/Kilpauk/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.06 of 2023 in R.C.No.350/Sec.Pro/DCP/Kilpauk/2022 dated 21.02.2023 under Section 122(1) (b) Cr.P.C and after enquiry, passed an order under Section 122(1)(b) Cr.P.C and remanded the petitioner to undergo imprisonment for a period of 213 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.

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, G-2, Periyamet Police Station, Chennai proceeded the proceedings against the petitioner under **Section 107 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 a period of 213 days. The impugned order dated 21.02.2023 passed by the 1st respondent in M.P.No.06 of 2023 in R.C.No.350/Sec.Pro/DCP/Kilpauk/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:-

*“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



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the Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

28.03.2023

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To

1. The Executive Magistrate cum Deputy Commissioner,
Kilpauk District, Chennai.
2. The Inspector of Police,
G-2, Periyamet Police Station,
Chennai
3. The Superintendent of Prison,
Central Prison, Puzhal-I, Chennai.



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V.SIVAGNANAM, J.

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