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Crl OP No. 12324 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 12324 of 2021
and
Crl.M.P. No. 6901 of 2021

Vinoth

... Petitioner

Versus

1. The State rep., by,
Sub Divisional Magistrate cum
Revenue Divisional Officer,
Perambalur,
Perambalur District.
2. The State rep., by,
The Inspector of Police,
Perambalur Police Station,
Perambalur & Chennai.
3. The Superintendent,
Central Prison,
Thiruchirappalli,
Trichy District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the proceedings in M.C. No. 36 of 2020 dated 05.03.2021 passed by the first respondent and quash the same by allowing the above criminal original petitioner and the set the petitioner at liberty.



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For Petitioner : No appearance.

For Respondents : Mr. A. Damodaran,
Additional Public Prosecutor.

ORDER

By order dated 05.03.2021, the petitioner was detained by the first respondent for violation of a bond executed by him under Section 110 of the Criminal Procedure Code. He was directed to undergo detention for a period of one year.

2. When the matter is taken up for hearing, the learned Additional Public Prosecutor appearing for the respondents fairly conceded that the first respondent is not the competent authority to pass an order under Section 122(1)(b) of the Criminal Procedure Code.

3. This Court finds that the impugned order passed by the first respondent dated 05.03.2021 cannot be sustained in view of the order of the Division Bench of this Court in Crl.R.C. No. 137 of 2018 etc., batch dated 13.03.2023 wherein, this Court had held as follows:-

*“88. Now that we have ousted the camel and
put the canopy of justice back to where it*



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belongs, our answers to the questions formulated in paragraph 2 are as under:

(a) GO.Ms.No.659, dated 12.09.2013 and GO.Ms.No.181, dated 20.02.2014 vesting Deputy Commissioners of Police with the powers of an Executive Magistrate for the purposes of Section 107 to 110 Cr.P.C, suffer from manifest arbitrariness and violates the principle of separation of powers under the Constitution. The GO?s are consequently violative of Articles 14, 21 and 50 of the Constitution of India and the proviso to Section 6 of the Madras District Police Act. Resultantly, we declare GO.MS.No.659, dated 12.09.2013 and GO.MS.No.181, dated 20.02.2014 as unconstitutional and ultra vires the aforesaid provisions. Consequently, the status quo ante that prevailed prior to the issuance of GO.MS.No.659, dated 12.09.2013 and GO.MS.No.181, dated 20.02.2014 stands restored forthwith.

(b) Ex~consequenti, the decision in Balamurugan v State, 2016 SCC Online Mad 23460, will stand overruled.

(c) Violation of a bond executed under



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Section 110 of the Cr.P.C., can be dealt with under Section 446 of the Code and not under Section 122(1)(b) of the Cr.P.C. Consequently, we affirm the judgment of Mr. Justice P.N Prakash in Devi v Executive Magistrate (2020 6 CTC 157) in its entirety. The decision of the learned single judge to the contrary in Vadivel @ Mettai Vadivel v The State (Crl.R.C.No. 982 of 2018 etc., batch) will stand overruled.

(d) GO.Ms.No.659, dated 12.09.2013 and GO.Ms.No.181, dated 20.02.2014 were issued only in exercise of powers under Section 20(1) of the Cr.P.C, and these Government Orders have been held to be unconstitutional. And ;

(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 122(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



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*prosecuted before the Judicial Magistrate for
inquiry and punishment under Section
122(1)(b)Cr.P.C”*

Therefore, the impugned order dated 05.03.2021 passed by the first respondent is set aside.

4. Accordingly, this Criminal Original Petition is allowed. The Superintendent of Prison, Central Prison, Thiruchirappalli, Trichy District is directed to release the petitioner forthwith, if his detention is no longer required in any other case. Consequently, connected miscellaneous petition is closed.

06.06.2023

ay

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Sub Divisional Magistrate cum
Revenue Divisional Officer,



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Perambalur,
Perambalur District.

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2. The Inspector of Police,
Perambalur Police Station,
Perambalur & Chennai.
3. The Superintendent,
Central Prison,
Thiruchirappalli,
Trichy District.
4. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

SUNDER MOHAN, J

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and
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