



Crl.RC.No.861 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.05.2023

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.No.861 of 2023
and
Crl.M.P.No.6649 of 2023

Nijamuthin

... Petitioner

Vs.

1.The Sub Divisional Magistrate and
The Deputy Commissioner,
The Deputy Commissioner Office,
Adyar, Chennai.

2.The Inspector of Police,
J-8, Neelankarai Police Station,
Law and Order,
Neelankarai, Chennai.

... Respondents

Prayer:- Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to set aside the order in M.P.No.4 of 2023 in Na.Ka.No.235/Sa.Na & Ka.Tu.Aa. Adyar District/ 2022 vide an order dated 03.03.2023 on the file of the 1st respondent and to allow the above Criminal Revision Case.



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For Petitioner : Mr.R.Parthiban
For Respondents : Mr.V.Meganathan,
Government Advocate (Crl. Side)

ORDER

This Revision has been filed challenging the order passed in M.P.No.4 of 2023 in Na.Ka.No.235/Sa.Na & Ka.Tu.Aa. Adyar District/ 2022 vide an order dated 03.03.2023 on the file of the 1st respondent, thereby detained the petitioner for the remaining bond period under Section 122(1)(b) of Cr.P.C.

2. The learned counsel for the petitioner would submit that after executing a bond under section 110 of Cr.P.C., for maintaining good behaviour for one year, a case has been registered against the petitioner in Cr.No.1276 of 2020 for the offence under sections 294(b), 341, 323 506(ii) of IPC. Since the petitioner violated the bond condition, the 1st respondent, proceeded against the petitioner and remanded the petitioner to prison by his proceedings under section 122(1)(b) of Cr.P.C. in M.P.No.4 of 2023 in Na.Ka.No.235/Sa.Na & Ka.Tu.Aa. Adyar District/ 2022 vide an order dated 03.03.2023 to undergo imprisonment



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for 131 days from 03.03.2022.

3. He further submitted that 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], the impugned order passed by the 1st respondent is unsustainable, Therefore, he seeks to set aside the impugned order passed by the 1st respondent.

4.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.

5.I have considered the matter in the light of submissions of the learned counsel for the petitioner and the respondents.

6.On perusal of the records and the impugned order, it reveals



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that since the petitioner has violated the bond executed under Section 110 Cr.P.C, the 1st respondent proceeded against him under Section 122(1)(b) Cr.P.C and remanded him to undergo imprisonment for the remaining period of the bond from 03.03.2022.

7. It is relevant to note that in the common judgment passed by a 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



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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”

8.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, dated 03.03.2023 passed by the 1st respondent is set aside and the Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Internet:Yes/No

dsa/jv



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To
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1. The Sub Divisional Magistrate and
The Deputy Commissioner,
The Deputy Commissioner Office,
Adyar, Chennai.
2. The Inspector of Police,
J-8, Neelankarai Police Station,
Law and Order,
Neelankarai, Chennai.
3. The Superintendent, Central Prison Puzhal-2, Chennai.
4. The Public Prosecutor, High Court, Madras.



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G.K.ILANTHIRAIYAN, J.
dsa/jv

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