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Crl.R.C.No.631 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.R.C.NO.631 OF 2023
AND CRL.M.P.NO.4816 OF 2023

Siva

... Petitioner

Vs.

1.The Executive Magistrate cum
Deputy Commissioner of Police
St. Thomas Mount,
Chennai – 600 016.

2.The Inspector of Police
Law and Order
S-7, Madipakkam Police Station
Kilkattalai, Chennai – 600 117.

... Respondents

PRAYER: Criminal Revision Case filed under section 397 r/w 401 of Criminal Procedure Code to set aside the conviction order imposed against the petitioner in M.C.No.03 of 2023 in Na.Ka.En458 / Nr. Se.Natu.Ka. Thu.Aa.Pu.Tho.Ma/2022 dated 23.02.2023 passed by the first respondent in by allowing this Criminal Revision Petition.

For Petitioner	...	Mr.M.Kalaiyaran
For Respondents	...	Mr.R.Vinothraja
		Government Advocate (Crl.Side)



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ORDER

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Challenging the order dated 23.02.2023 passed by the first respondent under Section 122 (1)(b) of Criminal Procedure Code in M.P.No.03 of 2023 in Na.Ka.En.458/Nr.Se.Natu.Ka.Thu.Aa.Pu.Tho.Ma/2022 pursuant to the Crime No.45 of 2023 under Sections 392 and 397 IPC on the file of G7 Achirapakkam Police Station, 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 23.02.2023 in M.P.No.03 of 2023 in Na.Ka.En.458/Nr.Se.Natu.Ka.Thu.Aa.Pu.Tho.Ma/2022, under Section 122(1)(b) Cr.P.C, pursuant to Crime No.45 of 2023 under Sections 392 and 397 IPC on the file of G7 Achirapakkam Police Station and remanded the petitioner till 29.11.2023. 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.



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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 Sub-Inspector of Police, G7 Achirapakkam Police Station 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 29.11.2023. The impugned order dated 23.02.2023 passed by the first respondent in M.P.No.03 of 2023 in Na.Ka.En.458/Nr.Se.Natu.Ka.Thu.Aa.Pu.Tho.Ma/2022 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



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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. Consequently, connected miscellaneous petition is closed.

05.04.2023

Internet : Yes/No
Speaking / Non-speaking order
TK

To

- 1.The Executive Magistrate cum
Deputy Commissioner of Police
St. Thomas Mount, Chennai – 600 016.
- 2.The Inspector of Police
Law and Order
S-7, Madipakkam Police Station
Kilkattalai, Chennai – 600 117.
- 3.The Sub Inspector of Police
G7 Achirapakkam Police Station
Achirapakkam.
- 4.The Superintendent
Central Prison
Puzhal, Chennai.
- 5.The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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V.SIVAGNANAM, J.

TK

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