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Crl.R.C.No.632 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.SIVAGNANAM

Crl.R.C.No.632 of 2023

Mubarak Ali

... Petitioner

Vs.

1. The Sub Divisional Magistrate
and Revenue Divisional Officer,
O/o.Chengalpattu Revenue
Divisional Office,
Chengalpattu District.
2. The Deputy Superintendent of Police,
Mamallapuram Sub-Division,
Chengalpattu District.
3. The State, represented by
The Inspector of Police,
E-4, Kalpakkam Police Station,
Kalpakkam, Chengalpattu District.

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 r/w Section 401 Cr.P.C., to set aside the impugned order dated 10.02.2023 in M.C.No.A1/204/2022 passed by the 1st respondent.

For Petitioner : Mr.A. Venkatesan
For Respondents : Mr.A. Gokulakrishnan
Addl. Public Prosecutor



ORDER

Challenging the order dated 10.02.2023 passed by the 1st respondent in M.C.No.A1/204/2022, this Criminal Revision is filed by the petitioner.

2. The learned counsel for the petitioner would submit that the 1st respondent, in pursuance of the complaint given by 2nd and 3rd respondents, initiated proceedings against the petitioner and made him to execute a bond on 25.11.2022 under section 110 of C.P.C., for maintaining good behaviour for one year. Subsequently, a case has been registered against the petitioner in Cr.No. 16 of 2023 for the offence under sections 341, 294(b), 353, 323, 324, 506(ii) and 379 IPC. Since the petitioner violated the bond condition, based on a complaint given by the 2nd and 3rd respondents, the 1st respondent, proceeded against the petitioner under section 122(1)(b) r/w.117 of Cr.P.C., and remanded the petitioner to prison by his proceedings in M.C.No.A1/204/2022, dated 10.02.2023 to undergo imprisonment until the expiry of the period of bond viz., 25.11.2023. 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.

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 report given by the 3rd respondent, Inspector of Police, E4 Kalpakkam Police Station, Chennai, initiated proceedings under section 107 Cr.P.C., against the petitioner and directed to him to execute a bond for keeping good behaviour under section 110 of Cr.P.C., pursuant to which, he executed a bond for keeping good behaviour on 25.11.2022 for a period of one year. 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 remanded him to undergo imprisonment for the remaining period of the bond till 25.11.2023.

6. It is relevant to note that in the order dated 13.03.2023 passed by 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*



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

7.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 the Criminal Revision Case is allowed.

06.04.2023

msr

Note: Issue copy on 18.04.2023

To

1. The Sub Divisional Magistrate
and Revenue Divisional Officer,
O/o.Chengalpattu Revenue
Divisional Office,
Chengalpattu District.
2. The Deputy Superintendent of Police,
Mamallapuram Sub-Division,
Chengalpattu District.
3. The Inspector of Police,
E-4, Kalpakkam Police Station,
Kalpakkam, Chengalpattu District.
4. The Superintendent,
Central Prison, Puzhal, Chennai.

V.SIVAGNANAM, J.

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