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Crl.RC No.738 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.RC No.738 of 2023
& Crl.MP.No.5755 of 2023

Anbarasu

... Petitioner

Vs.

1. The Executive Magistrate Cum Tahsildar,
Coimbatore North, Coimbatore.

2. State Rep by
Inspector of Police,
Thudiyalur Police Station,
Coimbatore

... Respondent

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to call for the records in respect of the impugned order passed on 11.02.2023 by the Hon'ble Executive Magistrate cum Tahsildar, Coimbatore, 1st respondent herein in Na.Ka.No.633/2023/Aa1 and set aside the same.

For Petitioner : Mr.R.Radha Pandian

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



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ORDER

This petition has been filed to set aside the order dated 11.02.2023 in Na.Ka.No.633/2023/Aa1 on the file of the first respondent.

2. The learned counsel for the petitioner would submit that after executing a bond under section 110 of C.P.C., for maintaining good behaviour for one year, a case has been registered against the petitioner in Cr.No. 66 of 2023 on 04.02.2023 for the offence under sections 8(c), 20(b) (ii)(B), 25 and 29(i) NDPS Act. Since the petitioner violated the bond condition, based on a complaint given by the 2nd respondent, 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 Na.Ka.No.633/2023/Aa1 dated 11.02.2023 to undergo imprisonment until 01.02.2024.



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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.



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6. On perusal of the records and the impugned order, it reveals 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 till 01.02.2024.

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



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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”

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 11.02.2023 passed by the 1st respondent is set aside and the Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

25.04.2023

Index:Yes/No
Internet:Yes/No
srn

V.SIVAGNANAM, J.



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srn

To

1. The Executive Magistrate Cum Tahsildar,
Coimbatore North, Coimbatore.
2. The Inspector of Police,
Thudiyalur Police Station,
Coimbatore
3. The Superintendent, Central Prison, Coimbatore
4. The Public Prosecutor, High Court, Madras.

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