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Crl.R.C.No.836 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.R.C.NO.836 OF 2023
AND CRL.M.P.NO.6405 OF 2023

S.Sunil Kumar

... Petitioner

Vs.

1.The Executive Magistrate cum
Deputy Commissioner of Police
Redhills District,
Chennai.

2.State Rep. By Inspector of Police
(Law & Order)
M-5, Ennore Police Station,
Chennai – 600 057.

... Respondents

PRAYER: Criminal Revision Case filed under Section 397 read with 401 Cr.P.C., to set aside the order dated 05.10.2022 passed in M.P.No.03/2022 in RC No.77/Sec.Pro/DCP RED/2022 in M5 Ennore Police Station Sl.No.25/2022 U/s. 110 Cr.P.C., on the file of the 1st respondent Executive Magistrate cum Deputy Commissioner of Police, Redhills District u/s.122(1)(b) r/w. 110 Cr.P.C., ordering to detain the petitioner for 286 days by allowing this revision.



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For Petitioner ... Mr.Azaghu P.Senthil Kumar
For Respondents ... Mr.R.Vinothraja
Government Advocate (Crl.Side)

ORDER

Challenging the order dated 05.10.2022 passed under Section 122(1)(b) Cr.P.C., in M.P.03/2022 by the first respondent viz., the Executive Magistrate cum Deputy Commissioner of Police, Redhills District, Chennai, sentencing the petitioner to undergo imprisonment for a period of 286 days from 05.10.2022 and for a direction to release him from prison, the petitioner is before this Court.

2.The learned counsel for the petitioner would submit that the first respondent passed an order dated 05.10.2022 under Section 122(1)(b) Cr.P.C., in M.P.No.03/2022 pursuant to the case in Crime No.564/2022 registered under Sections 147, 148, 341, 294(b), 323, 324, 307 and 506(ii) IPC and Sl.No.25/2022 u/s.110 Cr.P.C., on the file of second respondent police and remanded the petitioner. The 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***



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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.

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. and the petitioner is confined at Central Prison, Puzhal, Chennai.

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 second respondent, the Inspector of Police (Law & Order) M-5, Ennore Police Station, Chennai has proceeded to initiate proceedings against the petitioner 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)



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Cr.P.C and finally ordered to remand him for 286 days from 05.10.2022.

The impugned order dated 05.10.2022 passed by the first respondent in M.P.No.03 of 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”*



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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 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 is allowed. Consequently, connected miscellaneous petition is closed.

06.06.2023

Internet : Yes/No
TK

To

1. The Executive Magistrate cum
Deputy Commissioner of Police
Redhills District, Chennai.
2. State Rep. By Inspector of Police
(Law & Order)
M-5, Ennore Police Station,
Chennai – 600 057.
3. The Superintendent
Central Prison
Puzhal, Chennai.
4. The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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V.SIVAGNANAM, J.

TK

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