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Crl.R.C.No.708 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.R.C.NO.708 OF 2023
AND CRL.M.P.NO.5515 OF 2023

Thalapathy

... Petitioner

Vs.

State Rep. By

1.The Sub Division Magistrate Cum

Sub Collector

Ponneri.

2.Circle Inspector of Police (L&O)

C-3 Arani Police Station

Thiruvallur.

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in M.C.No.177/2022 in Na.Ka.No.12172/2023/A1 dated 17.02.2023 on the file of the first respondent.

For Petitioner ...

Mr.T.Balaji

For Respondents ...

Mr.R.Vinothraja

Government Advocate (Crl.Side)



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ORDER

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Challenging the order dated 17.02.2023 passed under Section 122(1)(b) Cr.P.C., in M.C.No.177/2022 in Na.Ka.No.12172/2023/A1, under Section 110 Cr.P.C., by the first respondent, this Criminal Revision is filed by the petitioner.

2.The learned counsel for the petitioner would submit that the first respondent passed an order vide Proceedings in Na.Ka.No.12172/2023/A1, dated 17.02.2023 under Section 122(1)(b) Cr.P.C and remanded the petitioner till 18.12.2025. 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.

3.The learned Government Advocate (Criminal Side) appearing for the respondents fairly conceded that the first respondent is



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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 second respondent, Circle Inspector of Police (L&O), C-3, Arani Police Station, Thiruvallur, 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 18.12.2025. The impugned order dated 17.02.2023 passed under Section 122(1)(b) Cr.P.C., in Na.Ka.No.12172/2023/A1 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***



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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 punishment under Section 122(1)(b) Cr.P.C. Therefore, the impugned



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order passed by the first respondent is set aside and the Criminal Revision

Case is allowed. No costs. Consequently, connected miscellaneous petition is closed.

20.04.2023

Internet : Yes/No

Speaking / Non-speaking order

Note : Issue order copy on 24.04.2023

TK

To

1.The Sub Division Magistrate Cum
Sub Collector
Ponneri.

2.Circle Inspector of Police (L&O)
C-3 Arani Police Station
Thiruvallur.

3.The Superintendent
Central Prison
Puzhal – II, Chennai.

4.The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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V.SIVAGNANAM, J.

TK

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