



Crl.R.C.No.1243 of 2023
and Crl.M.P.No.9776 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1243 of 2023

and Crl.M.P.No.9776 of 2023

Agil @ Agil Ahamed

... Petitioner

Vs.

1.The Executive Magistrate and
Deputy Commissioner of Police,
Washermenpet District,
Chennai – 600 081.

2.The Inspector of Police,
H8, Thiruvotriyur Police Station,
Thiruvotriyur, Chennai – 600 019.

... Respondents

Prayer : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order passed by the first respondent in M.P.No.11/2023 in M.C.No.531/Sec.Pro/DCPWPT/2022 order dated 27.01.2023 in Order under Section 122(1)(a) Cr.P.C.

For Petitioner : Ms.A.Mageshwari

for Mr.IlayarajaKandasamy

For Respondents : Mr.J.Subbiah, GA (Crl. Side)



WEB COPY



Crl.R.C.No.1243 of 2023
and Crl.M.P.No.9776 of 2023

ORDER

Challenging the orders passed by the first respondent under Section 122(1)(a) Cr.P.C made in M.C.No.531/Sec.Pro/DCPWPT/2022, the present Criminal Revision is filed.

2.The first respondent directed the petitioner to execute a bond under Section 110 Cr.P.C. for maintaining good behavior for a period of one year. Accordingly, the petitioner executed a bond on 09.07.2022. During the pendency of bond, two cases were registered against him by the Inspector of Police, Thiruvotriyur Police Station in Crime No.771/2022 & Crime No.8/2023 under Section 392 IPC. Therefore, the Deputy Commissioner of Police, Washermenpet Police Station initiated action against the revision petitioner under Section 122(1)(a) Cr.P.C. and directed him to undergo imprisonment for a period of 164 days.

3.Heard Ms.A.Mageshwari, the learned counsel for the revision petitioner and Mr.J.Subbiah, the learned Government Advocate (Crl.



Crl.R.C.No.1243 of 2023
and Crl.M.P.No.9776 of 2023

Side) for the respondents.

4.The learned counsel for the revision petitioner submitted that the Deputy Commissioner of Police cannot invoke the provisions of Section 110 of Cr.PC. She drew the attention of this Court to the said provisions which reads thus :

“110.Security for good behaviour from habitual offenders.—When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A,



Crl.R.C.No.1243 of 2023
and Crl.M.P.No.9776 of 2023

WEB COPY

section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of— (i) any offence under one or more of the following Acts, namely:—

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

[(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);] c) the Employees' Provident Fund 2 [and Family Pension Fund] Act, 1952 (19 of 1952);

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962);

(h) the Foreigners Act, 1946 (31 of 1946); or]

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or



Crl.R.C.No.1243 of 2023
and Crl.M.P.No.9776 of 2023

WEB COPY

(g) is so desperate and dangerous to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.”

5.A bare perusal of Section 110 Cr.PC clearly shows that only an Executive Magistrate, who receives information that there is within his local legal jurisdiction a person who is habitually committing any offence, can direct the said offender to execute a bond under Section 110 Cr.PC for a good behaviour.

6. A Division Bench of this Court in ***Crl.R.C.No.137/2018 batch cases*** dated 13.03.2023 ***[P.Sathish @ Sathis Kumar Vs. State Rep. by the Inspector of Police, Law and Order, H-4, Korukkupet Police Station, Chennai]***, in paragraph 90 of the said order has held as follows :-



WEB COPY



Crl.R.C.No.1243 of 2023
and Crl.M.P.No.9776 of 2023

"90.In the light of the declaration issued in paragraph 88(a), supra, it must necessarily follow that the proceedings initiated by the Deputy Commissioner of Police under Section 107~110 Cr.PC., must be held to be non~est since they lack jurisdiction. Accordingly, Crl.RC.Nos.751,754,772,773,790,822,858,859,861,865,867,868,873,891,892,921,924,938,954,957,963,993,1013,1022,1023,1027,1028,1031,1061,1072,1086,1094,1096,1098 of 2020, Crl.OP.Nos.14993,15027,15028,14926,14919,15031,916 of 2021, Crl.RC.Nos.317, 724, 1006,1604, 1012 of 2022 and Crl.RC.Nos.329, 701 of 2023 are allowed and the proceedings initiated by the concerned Deputy Commissioner will stand set aside"

7. In the instant case, the Deputy Commissioner of Police imprisoned the accused for the remaining period of bond. Since the first respondent is not an Executive Magistrate, the impugned order suffers



Crl.R.C.No.1243 of 2023
and Crl.M.P.No.9776 of 2023

WEB COPY

lack of jurisdiction. He does not have any power to pass the impugned order.

8. Accordingly, the present Criminal Revision Petition is allowed. The impugned order passed by the first respondent in M.P.No.11/2023 in M.C.No.531/Sec.Pro/DCPWPT/2022 dated 27.01.2023, is set aside. No costs. Consequently, connected Criminal Miscellaneous Petition is closed.

14.07.2023

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

mtl



WEB COPY



Crl.R.C.No.1243 of 2023
and Crl.M.P.No.9776 of 2023

R. HEMALATHA, J.

mtl

To

- 1.The Executive Magistrate and Deputy Commissioner of Police,
Washermenpet District, Chennai – 600 081.
- 2.The Inspector of Police, H8, Thiruvotriyur Police Station, Thiruvotriyur,
Chennai – 600 019.
3. The Section Officer, Criminal Section, High Court, Madras.

Crl.R.C.No.1243 of 2023

and Crl.M.P.No.9776 of 2023



WEB COPY



CrI.R.C.No.1243 of 2023
and CrI.M.P.No.9776 of 2023

14.07.2023