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Crl.RC No.835 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.RC No.835 of 2023
& Crl.MP.No.6404 of 2023

M.Raja @ Odukku Raja

...

Petitioner

Vs.

1. The State rep by its,
The Sub Divisional Executive Magistrate,
and Revenue Divisional Officer, Villupuram.

2. The Superintendent,
Sub Jail, Villupuram

...

Respondent

Prayer: Criminal Revision Petition filed under Section 397(1) to call for the records pertaining to proceedings in M.C.No.166 of 2022 dated 12.04.2023 passed by the 1st respondent to set aside the same by allowing the revision petition.

For Petitioner : M/s.Sathiya for



CrI.RC No.835 of 2023

Mr.D.Balaji

For Respondents : Mr.R.Vinothraja,

Government Advocate (CrI. Side)

ORDER

This petition has been filed to set aside the order dated 12.04.2023 in M.C.No.166 of 2022 on the file of the first respondent.

2. The learned counsel for the petitioner would submit that the petitioner had executed a bond for a sum of Rs.10,000/- under Section 110 of Cr.P.C for keeping peace for a period of 10 months. According to the respondent-Police, the petitioner had violated the condition and involved in a crime. Hence, the first respondent without passing any proceedings, has straight away issued a warrant of commitment of failure to find security to keep the peace under Section 122(1)(b) Cr.P.C, which is illegal and unsustainable and it has to be aside.

3.The learned Government Advocate (CrI.Side) appearing



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for the respondents submitted that the 1st respondent after issuing summons to the accused has straight away issued the warrant to keep him safely in the jail for a period of 10 months. He further submitted that he is unable to file any proceedings passed by the 1st respondent as directed by this Court on 07.06.2023.

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, by his order dated 12.04.2023 in M.C.No.166 of 2022 issued a warrant of commitment of failure to find security to keep the peace under Section 122(1)(b) Cr.P.C. It is noticed that the 1st respondent had not passed any proceedings in this regard. Further, the 1st respondent without hearing the petitioner, has straight away issued warrant, which is unsustainable and illegal. Apart from this, the 1st respondent/The



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Sub Divisional Executive Magistrate is not competent authority to issue any proceedings under Section 122(1)(b) Cr.P.C, 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]***

6. 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



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*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”.*

7.In the light of the above, the impugned order is unsustainable and the 1st respondent is not competent authority to impose any punishment under Section 122(1)(b) Cr.P.C. Therefore, the impugned order, dated 12.04.2023 passed by the 1st respondent is set aside and the Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.



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Index: Yes/No

Internet: Yes/No

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To

1. The Sub Divisional Executive Magistrate,
and Revenue Divisional Officer, Villupuram.
2. The Superintendent,
Sub Jail, Villupuram
3. The Superintendent, Sub Jail, Villupuram
4. The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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