



Crl.RC.No.860 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.05.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.860 of 2023
and
Crl.M.P.No.6624 of 2023

S.Sibi Harish

... Petitioner

Vs.

1.The Second-Class Administrative Magistrate-cum-
Revenue Tahsildar,
Bhavani, Erode District.

2.State rep. by
The Inspector of Police,
Bhavani Police Station,
Erode District.

... Respondents

Prayer:- Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to set aside the order in Na.Ka.No.2013/2023/Aa3 vide an order dated 26.04.2023 on the file of the 1st respondent and to allow the above Criminal Revision Case.

For Petitioner : Mr.N.Arun Kumar

For Respondents : Mr.V.Meganathan,

Government Advocate (Crl. Side)



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ORDER

This Revision has been filed challenging the order passed in Na.Ka.No.2013/2023/Aa3 vide an order dated 26.04.2023 on the file of the 1st respondent, thereby detained the petitioner for the remaining bond period under Section 122(1)(b) of Cr.P.C.

2. The learned counsel for the petitioner would submit that after executing a bond under section 109 of Cr.P.C., for maintaining good behaviour for one year, a case has been registered against the petitioner in Cr.No.293 of 2023 on 12.04.2023 for the offence under sections 8(c), 20(b)(ii)(B) of 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.2013/2023/Aa3 vide an order dated 26.04.2023 to undergo imprisonment until 11.10.2023.



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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.

6.On perusal of the records and the impugned order, it reveals that since the petitioner has violated the bond executed under Section 109 Cr.P.C, the 1st respondent proceeded against him under Section



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122(1)(b) Cr.P.C and remanded him to undergo imprisonment till 11.10.2023.

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 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



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*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 26.04.2023 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

dsa/jv



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To
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1. The Second-Class Administrative Magistrate-cum-Revenue Tahsildar,
Bhavani, Erode District.
2. The Inspector of Police,
Bhavani Police Station,
Erode District.
3. The Superintendent, Central Prison, Coimbatore.
4. The Public Prosecutor, High Court, Madras.



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dsa/jv

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