



Crl.RC.No.935 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.935 of 2023 &

Crl.M.P.No.7586 of 2023

Jai Ganesh

... Petitioner

/vs/

1. The Executive Magistrate cum Deputy Commissioner of Police,
St. Thomas Mount District.

2. The State represented by the Inspector of Police,
[Law & Order], S-9 Palavanthangal Police Station,
Chennai.

.. Respondents

Prayer : Criminal Revision Petition filed under section 397 read with 401 of Cr.P.C., to set aside the Order dated 20.09.2022 under section 122 [1] [b] of Cr.P.C. in M.P.No.21 of 2022 in Na.Ka.No.360/Nir.Se.Nad.DCP – St.Thomas Mount Dist/2022 in S-9 Palavanthangal P.S., S.I.No.74/Sec/Pro.2022 u/s.110 of Cr.P.C. [on the file of the Executive Magistrate cum Deputy Commissioner of Police, St. Thomas Mount District] to undergo Simple Imprisonment of 358 days [from 28.08.2022 to 20.08.2023].

For petitioner

... Mr.M.Illiyas

For Respondents

... Mr.R. Vinothraja, GA (crl.side)



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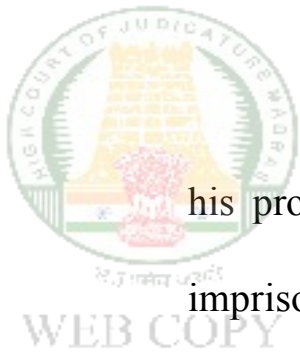
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ORDER

This Criminal Revision has been preferred seeking to set aside the Order dated 20.09.2022 passed under section 122 [1] [b] of Cr.P.C. in M.P.No.21 of 2022 in Na.Ka.No.360/Nir.Se.Nad.DCP – St.Thomas Mount Dist/2022 in S-9 Palavanthangal P.S., S.I.No.74/Sec/Pro/2022 u/s.110 of Cr.P.C. by the first respondent.

2. The learned counsel for the petitioner would submit that the 1st respondent, in pursuance of the case registered by the second respondent, initiated proceedings against the petitioner and made him to execute a bond on 20.08.2022 under section 110 of C.P.C., for maintaining good behaviour for a period of 12 months. Subsequently, a case has been registered against the petitioner in Cr.No.180 of 2023 for the offence under sections 294(b), 354, 341, 506(ii) of IPC read with Section 4 of TNPHW Act. Since the petitioner violated the bond condition, the 1st respondent, proceeded against the petitioner under section 122(1)(b) of Cr.P.C., and remanded the petitioner to prison by



his proceedings in M.C.No.21 of 2022, dated 02.09.2022 to undergo imprisonment for a period of 358 days [from 28.08.2022 to 20.08.2023].

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.

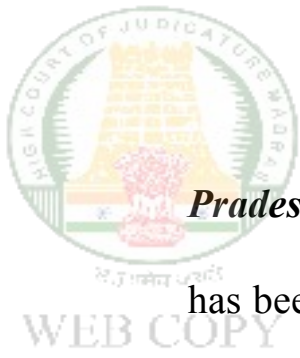
3. The learned Government Advocate (Crl.Side) appearing for the respondents fairly conceded that the 1st respondent is not competent authority to pass an order under Section 122(1)(b) Cr.P.C.

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 in pursuance complaint with affidavit given by the second respondent, initiated proceedings under section 107 Cr.P.C., against the petitioner and directed to him to execute a bond for keeping good behaviour under section 110 of Cr.P.C., pursuant to which, the petitioner executed a bond for keeping good behaviour on 20.08.2022 for a period of 12 months. Since the petitioner has violated the bond executed before the Executive Magistrate, the 1st respondent proceeded against him under Section 122(1)(b) Cr.P.C and finally remanded him to undergo simple imprisonment for a period of 358 days [from 28.08.2022 to 20.08.2023].

6. It is relevant to note that in the order dated 13.03.2023 passed by the Division Bench of this Court 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 02.06.2023, 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 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 1st respondent is not competent authority to impose any punishment under Section 122(1)(b)Cr.P.C. Therefore, the impugned order passed by the 1st respondent is set aside and the Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

02.06.2023



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To
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1. The Executive Magistrate cum Deputy Commissioner of Police,
St. Thomas Mount District.
2. The State represented by the Inspector of Police,
[Law & Order], S-9 Palavanthangal Police Station,
1. Chennai.
3. The Superintendent, Central Prison, Puzhal.
4. The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

VRC

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