



Crl.R.C.No.881 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 18.05.2023**

CORAM

**THE HON'BLE MR. JUSTICE A.A.NAKKIRAN**

**Crl.R.C.No.881 of 2023**

**and**

**Crl.M.P.No.7058 of 2023**

Lallu @ Lallu Prasadh  
S/o.Sekar

... Petitioner

Vs.

1.The Sub Divisional Magistrate  
and Revenue Divisional Officer,  
Mettur Taluk,  
Salem District.

2.The State Represented by  
Inspector of Police,  
Karumalaikoodal Police Station,  
Salem District.

... Respondents

**Prayer:** Criminal Revision Case filed under Sections 397 & 401 of Cr.P.C.,  
pleaded to set aside the detention order passed on 19.04.2023 in  
Na.Ka.No.976/2023/D, on the file of the Learned Sub Divisional Magistrate  
and Revenue Divisional Officer Court, Mettur in Karumalaikoodal Police  
Station in Crime No.51 of 2023, under Section 110 of Cr.P.C.



Crl.R.C.No.881 of 2023

WEB COPY

For Petitioner : Ms.S.Lakshmi  
For Respondents : Mr.S.Vinoth Kumar  
Government Advocate  
(Criminal Side)

### **ORDER**

The Criminal Revision Case has been filed challenging the detention order passed on 19.04.2023 in Na.Ka.No.976/2023/D on the file of the Learned Sub Divisional Magistrate and Revenue Divisional Officer Court, Mettur in Karumalaikoodal Police Station in Crime No.51 of 2023.

2. The petitioner states that a case has been registered against him in Karumaikoodal Police Station, Salem District in Crime Prevention No.20 of 2022 and he has been produced before the Learned Sub Divisional Magistrate and Revenue Divisional Officer, Mettur and executed a bond for one year under Sections 110 and 117 of the Criminal Procedure Code on 09.02.2023.

3. The case of the prosecution is that the petitioner along with two others on 19.02.2023 at around 8:00 p.m went to the complainant's house and



Crl.R.C.No.881 of 2023

threatened the complainant's husband and took Rs.1000/- at the tip of knife.

On 20.02.2023, the Inspector of Police, Karumalaikoodal Police Station, Salem District has registered a case against the petitioner for the alleged offence in which the petitioner involved in a criminal case in Crime No.51 of 2023 for the offences under Sections 294(b), 392 of the Indian Penal Code and thereafter, the petitioner was remanded to judicial custody on the same day i.e., on 20.02.2023. The 1<sup>st</sup> respondent by invoking Section 122(1) (b) of the Criminal Procedure Code passed the impugned order on 19.04.2023, stating that the petitioner shall be kept in judicial custody for the remaining bond period till 08.02.2024. Challenging the impugned order, the revision petitioner moved this Criminal Revision Case before this Court.

4. The learned counsel for the revision petitioner made a submission that regarding the case of the petitioner, the Hon'ble Division Bench of this Court resolved the issues similar to the case of the revision petitioner in ***Crl.R.C.Nos.137 of 2018 [P.Sathish @ Sathish Kumar Vs. The State and Another], etc. and batch.***



WEB COPY

5. The relevant paragraphs of the above said order is extracted

hereunder:

**“V. CONCLUSIONS:-**

*88. Now that we have ousted the camel and put the canopy of justice back to where it belongs, our answers to the questions formulated in paragraph 2 are as under:*

*(a) GO.Ms.No.659, dated 12.09.2013 and GO.Ms.No.181, dated 20.02.2014 vesting Deputy Commissioners of Police with the powers of an Executive Magistrate for the purposes of Section 107 to 110 Cr.P.C, suffer from manifest arbitrariness and violates the principle of separation of powers under the Constitution. The GO's are consequently violative of Articles 14, 21 and 50 of the Constitution of India and the proviso to Section 6 of the Madras District Police Act. Resultantly, we declare GO.MS.No.659, dated 12.09.2013 and GO.MS.No.181, dated 20.02.2014 as unconstitutional and ultra vires the aforesaid provisions. Consequently, the status quo ante that prevailed prior to the issuance of GO.MS.No.659, dated 12.09.2013 and GO.MS.No.181, dated 20.02.2014 stands restored forthwith.*

*(b) Ex-consequenti, the decision in **Balamurugan v State**, 2016 SCC Online Mad 23460, will stand overruled.*

*(c) Violation of a bond executed under Section 110 of the Cr.P.C., can be dealt with under Section 446 of the*



Crl.R.C.No.881 of 2023

WEB COPY

*Code and not under Section 122(1)(b) of the Cr.P.C. Consequently, we affirm the judgment of Mr. Justice P.N Prakash in **Devi v Executive Magistrate** (2020 6 CTC 157) in its entirety. The decision of the learned single judge to the contrary in **Vadivel @ Mettai Vadivel v The State** (Crl.R.C.No. 982 of 2018 etc., batch) will stand overruled.*

*(d) GO.Ms.No.659, dated 12.09.2013 and GO.Ms.No.181, dated 20.02.2014 were issued only in exercise of powers under Section 20(1) of the Cr.P.C, and these Government Orders have been held to be unconstitutional. And ;*

*(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 v State of Uttar Pradesh** (1982) 1 SCC 71, an Executive Magistrate cannot authorize imprisonment under Section 122(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 challaned or prosecuted before the Judicial Magistrate for inquiry and punishment under Section 122(1)(b) Cr.P.C.*

*89. Coming to the individual cases, in light of the declaration issued in paragraph 88(a), supra, it must necessarily follow that the impugned orders in all cases where*



Crl.R.C.No.881 of 2023

WEB COPY

*the Deputy Commissioners of Police have exercised powers to initiate proceedings under Section 122(1)(b), will have to be quashed. Accordingly, Crl.R.C.Nos.1366, 1367, 1392, 1393, 1439, 1585, 1478, 1479, 1501, 1528, 1540, 1541 of 2017 Crl.RC.Nos.1295,1422, 1474, 1476, 178 of 2018, Crl.Rc.No.61, 117, 251, 285, 336, 344, 472, 473, 512, 515, 543, 553, 577, 592, 1017, 1008, 1116, 1127, 1197, 1204, 1224, 1243 of 2020, Crl.Rc.No.300, 353, 778, 781, 880, 905, 923, 925, 951, 972, 981, 985, 1012, 1036, 1050, 1053, 1098, 150, 808 of 2021, Crl.Rc.No.984 of 2022, Crl.Rc.Nos.26, 52, 118, 180, 183, 215, 223, 286, 299, 397, 415, 506, 639, 659, 661, 687, 697, 709, 713, 722, 755, 817, 823, 829, 833, 849, 863, 869, 903, 924, 1005, 1116, 1123, 1138, 1144, 1147, 1148, 1161, 1189, 1190, 1208, 1227, 1241, 1245, 1259, 1282, 1320, 1391, 1401, 1408, 1410, 1475, 1491, 1555, 1580, 1600, 1607, 1634, 1649, 1672, 1673, 1674, 1676, 1688, 1693 of 2022, Crl.RC.Nos.5, 10, 18, 21, 23, 27, 30, 33, 83, 86, 122, 123, 129, 144, 159, 165, 183, 194, 198, 222, 201, 285, 302 and 316 of 2023 are allowed, and the impugned orders therein are set aside. The petitioners will be released forthwith, if their presence is not otherwise required in connection with any other case.*

*90.In the light of the declaration issued in paragraph 88(a), supra, it must necessarily follow that the*



Crl.R.C.No.881 of 2023

WEB COPY

*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.*

*91. We, however, make it clear that this will not preclude the law enforcement agencies from moving the concerned Revenue Authority/Executive Magistrate for initiation of proceedings under Section 107-110 afresh, if there exists the requisite material for laying information before the concerned Executive Magistrate under the aforesaid provisions.*

*92.In the light of the law declared in paragraph 88(e), supra, orders passed even by the Revenue Authorities acting as Executive Magistrates, by exercising powers under Section 122(1)(b) Cr.P.C., will have to be quashed. Accordingly, Crl.Rc.No.616 of 2015, Crl.Rc.Nos.1216, 1217,*



Crl.R.C.No.881 of 2023

WEB COPY

*1215, 1213, 1214, 1312, 1569 of 2016, Crl.RC.No.161 of 2017, Crl.RC.No.26, 107, 404, 484, 485, 488, 516, 528, 540, 562, 564, 567, 569, 580, 927 of 2020, Crl.RC.No. 334, 335, 357, 433, 688, 913, 914, 1082, 1110 of 2021, Crl.OP.No.25073 of 2021, Crl.RC.Nos.3, 31, 35, 38, 42, 62, 115, 121, 128, 135, 166, 270, 287, 293, 309, 345, 365, 398, 416, 424, 439, 443, 500, 607, 625, 653, 655, 656, 657, 684, 701, 703, 860, 886, 887, 890, 922, 926, 975, 992, 1028, 1040, 1047, 1092, 1104, 1170, 1212, 1284, 1309, 1400, 1445, 1560, 1569, 1624 of 2022, are allowed and the impugned orders therein are set aside. The petitioners will be released forthwith, if their presence is not otherwise required in connection with any other case.*

*93.In all those cases where proceedings have been initiated by Revenue Authorities acting as Executive Magistrates, under Section 107-110 Cr.PC., we deem it fit to remand those cases back to the file of the learned Single Judge to enable the learned Single Judge to deal with each case on its own merits and in accordance with law and pass final orders. Accordingly, Crl.RC.Nos.610, 622, 640, 725, 758, 784, 817, 851, 883, 900, 947, 978, 1063 of 2020, Crl.OP.Nos.14872, 14883, 14909 of 2021, Crl.RC.Nos. 852, 1119, 1605, 1606 of 2022, Crl.OP.No.3936 of 2022 and Crl.RC.No.95 of 2023, are remanded back to the file of the*



Crl.R.C.No.881 of 2023

*learned Single Judge. Registry is directed to post these Criminal Revision Cases, before the learned Single Judge.*

*94.Crl.RC.Nos.298 of 2020, 813 of 2022, 971 of 2020 and Crl.RC.No. 1420 of 2022, were also posted along with this batch. These cases do not form part of this batch and it has been wrongly posted. Hence, these cases are delinked from this batch and the Registry is directed to post these cases before the concerned portfolio Judge.*

*95.Justice V.Parthiban and Justice P.N.Prakash, had disposed of the cases posted before them, but, however since they referred the matter to be placed before a Division Bench, the cases which they disposed of were also listed before us. Since the cases in Crl.RC.Nos.137, 955, 970, 982, 991, 993, 1025, 1066, 1142, 1241,1286, 1322, 1371, 1386, 1410, 1511, 1164 of 2018, Crl.RC.Nos.87, 54, 72 of 2019, Crl.RC.No.78 of 2020, have already been disposed of, no further orders are required to be passed in these cases.*

*96.Before drawing the curtains, we place on record our appreciation for the assistance rendered by the learned counsel for the petitioners, the learned Additional Public Prosecutor and the Amicus Curiae. We were dealing with a very important issue directly touching upon the liberty of an*



CrI.R.C.No.881 of 2023

*individual under Article 21 of the Constitution of India and we could not have written this exhaustive judgment and answered the questions that were referred to us, without the able assistance of the Bar.”*

6. In view of the fact that the case of the petitioner is also similar to that of the cases cited *supra*, the revision petitioner is also entitled to the relief claimed. Accordingly, in light of the law declared in paragraph 88(a) *supra*, orders passed even by the Revenue Authorities acting as Executive Magistrates, by exercising powers under Section 122(1)(b) of Cr.P.C., will have to be quashed and consequently, this Criminal Revision Petition stands allowed.

7. The petitioner will be released forthwith, if their presence is not otherwise required in connection with any other case. Connected Miscellaneous Petition is closed.

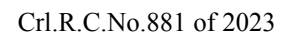
**18.05.2023**

Jeni/arb

Index: Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No



1. The Sub Divisional Magistrate  
and Revenue Divisional Officer,  
Mettur Taluk,  
Salem District.

2.The Inspector of Police,  
The State  
Karumalaikoodal Police Station,  
Salem District.

### 3. The Public Prosecutor, High Court of Madras.



WEB COPY



Crl.R.C.No.881 of 2023

**A.A.NAKKIRAN, J.**

Jeni/arb

Crl.R.C.No.881 of 2023

18.05.2023