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Crl.R.C.No.1028 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.SIVAGNANAM

Crl.R.C.No.1028 of 2023 &
Crl.M.P.No.8186 of 2023

Jayaraja

... Petitioner

Vs.

1. The Sub Divisional Magistrate
O/o.Sub Collector,
Nagapattinam District.
2. The Inspector of Police,
Velankanni Police Station,
Nagapattinam District.

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., to call for the records and quash the proceedings in M.C.No.60/2023/A3, dated 26.05.2023 passed by the 1st respondent.

For Petitioner : Mr.P. Muthamizh Selvakumar

For Respondents : Mr.R. Vinoth Raja,
Govt.Advocate (crl.side)



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CrI.R.C.No.1028 of 2023



ORDER

Challenging the order dated 26.05.2023 passed by the 1st respondent in M.C.No.60/2023/A3, this Criminal Revision is filed by the petitioner.

2. The learned counsel for the petitioner would submit that the 1st respondent, in pursuance of the complaint given by 2nd respondent, initiated proceedings against the petitioner and made him to execute a bond on 14.02.2023 under section 111 of C.P.C., for maintaining good behaviour for one year. Subsequently, a case has been registered against the petitioner on 26.02.2023 in Cr.No. 100 of 2023 for the offence under section 4(1)(aaa) r/w.4(1-A) TNP Act. Since the petitioner violated the bond condition, based on a complaint given by the 2nd respondent, the 1st respondent, proceeded against the petitioner under section 122(1)(b) r/w.111, 117 of Cr.P.C., and remanded the petitioner to prison by his proceedings in M.C.No.60/2023/A3, dated 26.05.2023 to undergo imprisonment until the expiry of the period of bond viz., 13.02.2024.



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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 (CrI.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 the 1st respondent in pursuance of the report given by the 2nd



respondent- Inspector of Police, Velankanni Police Station, Nagapattinam District, initiated proceedings under section 107 of 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, on 14.02.2023, he executed a bond for keeping good behaviour for a period of one year from the date of execution of bond i.e., 14.02.2023. Since the petitioner has violated the bond executed before the Executive Magistrate, the 1st respondent proceeded against him under Section 122(1)(b) r/w.111, 117 of Cr.P.C and finally remanded him to undergo imprisonment for the remaining period of the bond till 13.02.2024.

7. It is relevant to note that in the order dated 13.03.2023 passed by 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]**, 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 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 passed by the 1st respondent is set aside and the Criminal Revision Case is allowed. Consequently, the connected miscellaneous petition is closed.

19.06.2023

msr

Index : yes/no

Internet: yes/no

Note: Issue copy on 21.06.2023

To

1. The Sub Divisional Magistrate
O/o.Sub Collector, Nagapattinam District.
2. The Inspector of Police,



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- Velankanni Police Station,
Nagapattinam District.
3. The Superintendent,
Central Prison, Trichy.
 4. The Public Prosecutor,
High Court, Madras

V.SIVAGNANAM, J.

msr

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