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CrI.RC.No.1059 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CrI.R.C.No.1059 of 2023 &

CrI.M.P.No.8472 of 2023

Natarajan @ Sevittu Natarajan

... Petitioner

/vs/

1. The Sub Divisional Magistrate and
Revenue Divisional Officer [FAC]
Chengalpet.

2. The Deputy Superintendent of Police,
Mamallapuram, Chengalpet.

.. Respondents

Prayer : Criminal Revision Petition filed under section 397 read with 401 of Cr.P.C., to set aside the Order dated 22.05.2023 under section 122 [1] [b] read with 117 of Cr.P.C. in M.C.No.A1/151/2022 on the file of the first respondent and to allow the above Criminal Revision Case.

For petitioner

... Mr.M.Illiyas

For Respondents

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

ORDER



WEB COPY This Criminal Revision has been preferred seeking to set aside the Order dated 22.05.2023 passed under section 122 [1] [b] read with 117 of Cr.P.C. in in M.C.No.A1/151/2022 on the file of the first respondent and to allow the above Criminal Revision Case.

2. The learned counsel for the petitioner would submit that the 1st respondent had initiated proceedings against the petitioner and made him to execute a bond on 20.09.2022 under section 110 of C.P.C., for maintaining good behaviour for a period of one year. Subsequently, a case has been registered against the petitioner in Crime No.182 of 2023 for the offence under sections 4[1][a], 4[1-A] TNP Act read with 6 and 11 of RS Rules -2000. Since the petitioner violated the bond condition, the 1st respondent, proceeded against the petitioner under section 122(1)(b) read with 117 of Cr.P.C., and remanded the petitioner to prison by his proceedings in M.C.No.A1/151/2022, dated 22.05.2023 to undergo imprisonment until the expiry of the period of bond viz., 19.09.2023. 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 (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) read with 117 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 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 20.09.2022 for a period of one year. Since the petitioner has violated the bond executed before the Executive Magistrate, the 1st respondent proceeded against him under Section 122(1)(b) read with 117 Cr.P.C and finally remanded him to undergo simple imprisonment till the expiry of the bond period viz., 19.09.2023.

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 21.06.2023, 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) read with 117 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.

21.06.2023

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Crl.RC.No.1059 of 20__

To
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1. The Sub Divisional Magistrate and
Revenue Divisional Officer [FAC]
Chengalpet.
2. The Deputy Superintendent of Police,
Mamallapuram, Chengalpet.
3. The Superintendent, Central Prison, Puzhal.
4. The Public Prosecutor, High Court, Madras.



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Crl.RC.No.1059 of 2023

V.SIVAGNANAM, J.

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Crl.R.C.No.1059 of 2023

21.06.2023