



WEB COPY



Crl.RC.No.1130 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.1130 of 2023 &

Crl.M.P.No.8906 of 2023

Asar @ Immam Oli

... Petitioner

/vs/

1. The Sub Divisional Executive Magistrate &
Revenue Divisional Officer,
Villupuram.

2. The Superintendent,
District Jail, Vedampattu, Villupuram District.

3. The State by the Inspector of Police,
Villupuram Town Police Station,
Villupuram .

... Respondents

Prayer : Criminal Revision Petition filed under section 397 and 401 of Cr.P.C., to set aside Order passed by the learned Sub Division Executive Magistrate, Villupuram, dated 09.06.2023 in Ref.No.MC/151/2023 and allow the above Criminal Revision.



WEB COPY



CrL.RC.No.1130 of 20__

For Petitioner ... Mr.V.Sairam

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

ORDER

This Criminal Revision has been preferred seeking to to set aside Order passed by the learned first respondent dated 09.06.2023 in Ref.No.MC/151/2023 and allow the above Criminal Revision.

2. The learned counsel for the petitioner would submit that the 1st respondent, in pursuance of the case registered by the third respondent, initiated proceedings against the petitioner and made him to execute a bond on 25.05.2023 under section 110 of C.P.C., for maintaining good behaviour for a period of ten months. Subsequently, a case has been registered against the petitioner in Cr.No.198 of 2023 of Villupuram Town Police Station for the offences under sections 294[b], 506[ii] of IPC read with 7[1] [a] of CLA 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 issued summons to the petitioner



in M.C.No.151 of 2023, dated 08.06.2022 and remanded him to custody.

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 a 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 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 for a period of ten months on 25.05.2023. 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 issued summons to the petitioner and remanded him to custody.

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 26.06.2023, 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



WEB COPY



Cr.L.RC.No.1130 of 20__

*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.

26.06.2023

vrc

Note : Issue Order Copy on 27.06.2023



Crl.RC.No.1130 of 20__

1. The Sub Divisional Executive Magistrate &
Revenue Divisional Officer,
Villupuram.
2. The Superintendent,
District Jail, Vedampattu, Villupuram District.
3. The State by the Inspector of Police,
Villupuram Town Police Station,
Villupuram
4. The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.RC.No.1130 of 20__

V.SIVAGNANAM, J.

vrc

Crl.R.C.No.1130 of 2023

26.06.2023