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Crl.O.P.(MD).No.8209 of 2022 and batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.03.2023

Delivered On: 25.07.2023

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD).Nos.8209, 10572 & 18264 of 2022,
4567, 4974 & 7962 of 2023

and Crl.M.P.(MD).Nos.5540, 5541, 6624, 6625 & 12193 of 2022,
4007, 4010, 4391, 4392 & 6971 of 2023

Cause Title in Crl.O.P.(MD).No.8209 of 2022

Karthick @ Dharma

... Petitioner/Accused

Vs.

1.The Executive Magistrate II Cum Tahsildar,
Ramanathapuram District,
Ramanathapuram.

2.The Jail Superintendent,
District Prison,
Ramanathapuram.

3.The Inspector of Police,
Uchipuli Police Station,
Ramanathapuram District.

... Respondents/Complainants

PRAYER : Criminal Original Petition filed under Section 482 of the
Criminal Procedure Code, to call for the records pertaining to the
proceedings issued by the respondent in A3/4201/22 M.C.No.242/22

1/15



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dated 07.04.2022 passed by the 1st respondent u/s.110 (e) Cr.P.C. r/w 113
of Cr.P.C. and quash the same.

For Petitioner : Mr.J.Vishnu

For Respondents : Mr.R.Suresh Kumar
Government Advocate (Crl. Side)

COMMON ORDER

Let us first go into the facts of the individual cases:

Crl.O.P.(MD).No.8209 of 2022:

The respondent had initiated an action against the petitioner stating that as per the order of the Executive Magistrate in M.C.No. 242/2021, dated 04.08.2021, he executed a bond for a period of one year for keeping good behaviour. In violation of the above said bond, he involved in another crime number in Cr.No.83 of 2022 u/s. 25(1)(a) of Indian Arms Act. Since he has violated the above said bond which was executed by him for keeping good behaviour, action was proposed to be initiated under Section 122(1)(b) of Cr.P.C.

Crl.O.P.(MD).No.10572 of 2022:

The respondent had initiated an action under Section 122(1)(b) of Cr.P.C. against the petitioner stating that as per the order of the



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Executive Magistrate dated 07.04.2022 in M.C.No.126 of 2022, this petitioner has executed a bond for one year for keeping good behaviour. But in violation of the above said bond, he was found involved in subsequent assault and robbery cases. So he was called upon to explain as to why action under Section 122(1)(b) Cr.P.C. shall not be taken against him.

Crl.O.P.(MD).No.18264 of 2022:

The first respondent had initiated the proceedings in M.C.No. 243/2022-A4 against the petitioner, on the ground that this petitioner was involved in various criminal cases. So proceedings were initiated against him under Section 110 Cr.P.C. In pursuance of the above said order, which was passed by the Executive Magistrate, Kumbakonam, he executed a bond for keeping good behaviour for a period of one year on 20.11.2021. But in violation of the above said bond, he is involved in Crime No.876 of 2022 on 11.09.2022 u/s.3(2)(va) SC/ST Prevention of Atrocities Act r/w 323 IPC. So he was arrested in the above said crime number and remanded to judicial custody. On knowing that the petitioner has violated the above said bond executed by him for keeping good



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behaviour, action was proposed to be initiated under Section 122(1)(b) of Cr.P.C.

CrI.O.P.(MD).No.4567 of 2023:

The first respondent had initiated the proceedings in Na.Ka.No. 433/2023/A1 dated 08.02.2023 and Na.Ka.No.433/2023/A1 dated 24.01.2023, stating that in pursuance of the order dated 16.12.2022 by the Executive Magistrate/Revenue Divisional Officer, Usilampatti, this petitioner executed a bond for keeping good behaviour for a period of one year. But in violation of the above said bond, he is involved in another criminal case, which was registered in Crime No.37 of 2023 for the offence under Sections 8(c), 20(b)(ii) of NDPS Act. Therefore, proceedings were initiated under Section 122(1)(b) of Cr.P.C.

CrI.O.P.(MD).No.4974 of 2023:

The first respondent had initiated the proceedings in Na.Ka.No. 433/2023/A1 dated 08.02.2023 and Na.Ka.No.433/2023/A1 dated 24.01.2023, stating that in pursuance of the order of the Executive Magistrate/Revenue Divisional Officer, Usilampatti, this petitioner executed a bond on 06.01.2023 for keeping good behaviour for a period



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of one year. But in violation of the above said bond, he is involved in another criminal case, which was registered in Crime No.37 of 2023 for the offence under Sections 8(c), 20(b)(ii) of NDPS Act. Therefore, proceedings were initiated under Section 122(1)(b) of Cr.P.C.

Crl.O.P.(MD).No.7962 of 2023:

Action was initiated against the petitioner by the respondent stating that he has executed a bond on 20.09.2022 for keeping good behaviour for one year in M.C.No.1107/2022. But in violation of the above said bond, he is involved in Crime No.89 of 2022 which was registered for the offence under Section 294(b) IPC & 25(1)(a) of Arms Act. Therefore, he was called upon to explain as to why proceedings under Section 122(1)(b) of Cr.P.C. should not be initiated against him.

2. Challenging the above said summons, these petitioners have come forward with these petitions.

3. In all these matters, only common question of law arises for consideration, but not facts. On the short point all these petitions can be



disposed of.

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4. In all these matters, the common factual issue is that in violation of bond executed by the petitioners under Section 110 Cr.P.C., they indulged in subsequent criminal cases. Therefore, action was proposed to be initiated under Section 122 (1)(b) Cr.P.C.

5. Section 110 Cr.P.C. reads as under.

“110. Security for good behaviour from habitual offenders:- *When an Executive Magistrate receives information that there is within his local jurisdiction a person who—*

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment of disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the Commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian



Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the Commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely:—

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(c) the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952);

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962);
or

(ii) any offence punishable under any other



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law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

Amendmend Act, 2005:- *In order to effectively deal with offences under the Foreigners Act, 1946 a need has been felt to strengthen the hands of States authorities by empowering them to take action under Section 110 of the Code against persons assisting infiltration. This will help to check the flow of undesirable foreigners into the Country. The Foreigners Act, 1946 is, accordingly, being added as item (h) of Sub-clause (I) of Clause (f).”*

6. Now, it has been more or less well settled that proceedings under section 110 Cr.P.C is judicial proceedings. whether proper and due process was followed at the time of passing order under Section 111 Cr.P.C., is not known. We need not go back into the above said issue



now, since it has been admitted by the petitioners that they executed bond in the above said respective proceedings. Similarly, the order that was passed under Section 117 Cr.P.C. is also not under questioned now. So we need not go into that aspect. We can straight away go into Section 122(1)(b) Cr.P.C., which is stated to be initiated against these petitioners. Section 122 reads as under:

“122. Imprisonment in default of security.

(1) (a) If any person ordered to give security under section 106 or section 117 does not give such security on or before the date on which the period for Which such security is to be given commences, the shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period- he gives the security to the Court or Magistrate who made the order requiring it.

(b) If any person after having executed a bond without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor- in- office, to have committed breach of the bond, such Magistrate or successor- in-- office may, after recording the grounds of such proof,



order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, and after giving the concerned person a reasonable opportunity of being heard, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(4) If security has been required in the course of the same proceeding' from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge under sub- section (2), such reference shall also include the case of any



other of such persons who has been ordered to give security, and the provisions of sub- sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned, shall not exceed the period for which he was ordered to give security.

(5) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub- section (2) or sub- section (4) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(6) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

(7) Imprisonment for failure to give security for keeping the peace shall be simple.

(8) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108, be simple, and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs.”



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7. In the above said we are concerned about Section 122(1)(b), since bonds have been executed under Section 117 Cr.P.C. So whether the Executive Magistrate is empowered to initiate action under Section 122 (1)(b) Cr.P.C. is also now well settled in view of the Judgment of the Honourable Division Bench of this Court in Sathish @ Sathishkumar vs State. The Relevant extract is as follows:

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

8. Earlier to this Division Bench order, there was conflicts of opinion between two judgments **Devi V. Executive Magistrate** (2020 6 CTC 157) and **Vadivel @ Mettai Vadivel V. The State** (Crl.R.C.No.982



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of 2018 etc., batch). It was resolved that the above said action can be initiated only by the Judicial Magistrate under Section 446 of Cr.P.C. This has also been clarified in para (e) of the above said Division Bench order.

“(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 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 challenged or prosecuted before the Judicial Magistrate for inquiry and punishment under Section 122(1)(b) Cr.P.C.”

9. So the proceedings initiated by the respondents in all these matters are non-est and without jurisdiction. All these petitions are liable to be allowed, of course liberty is granted to the competent authority to move jurisdictional Magistrate Court by way of proper proceedings.



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10. With the above said liberty, all the petitions are **allowed** and the proceedings initiated by the respondents in all these petitions are hereby quashed. Consequently, connected miscellaneous petitions are closed.

25.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Executive Magistrate Cum
The Deputy Commissioner of Police – West,
Tirunelveli Town.
- 2.The Sub-Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli Town.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVA,J.

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