



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/01/2023

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.RC(MD)No.975 of 2022

Mohamed Ali : Petitioner/Respondent

Vs.

1.The Executive Magistrate and
Deputy Commissioner of Police (South),
Madurai City.

2.The Inspector of Police,
B1-Villakuthoon Police Station,
Madurai City.

3.The Superintendent of Prison,
Central Prison,
Madurai. : Respondents

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the detention order passed by the 1st respondent in MC No. 161/Ni.Se.Na. & Ka.Thu.Aa/Ma.Maa/2022, dated 04.08.2022.

For Petitioner : Mr.A.Jainul Abudheen

For Respondents : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

O R D E R

This criminal revision has been filed seeking to set aside the detention order passed by the 1st respondent in MC No.161/Ni.Se.Na.& Ka.Thu.Aa/Ma.Maa/2022, dated 04.08.2022.



2.The facts in brief:-

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Proceedings under section 122(1)(b) r/w 117 Crl.P.C was initiated by the Executive Magistrate and Deputy Commissioner of Police (South), Madurai city, in MC No.161 of 2022 on the following facts and circumstances:- Finding that this petitioner has indulged in several criminal cases, over which, a case in Crime No.2 of 2022 for the offence punishable under section 110 Cr.P.C was registered and recommendation was made by the concerned Inspector of Police. Summon was issued to the petitioner to appear before the first respondent, on 17/03/2022. He also appeared and he was directed to execute a bond for keeping good conduct under section 117 Cr.P.C. along with two sureties for one year. He was released on executing the above said bond. Later, the petitioner was found arrayed as an accused in Crime No.164 of 2022 for the offences punishable under sections 147, 148 and 307 IPC on the file of the B1 Police station Vilakuthoon Police Station. On that ground, recommendation has been made to initiate action under section 122(1)(b) Cr.P.C. Summon was issued to the petitioner. He also appeared and opportunity was given to the petitioner to engage an Advocate to cross examine the witnesses. But the petitioner did not opt for cross examining the witnesses. So on that ground, final order was passed by detaining the petitioner for seven months 14 days



till 16/03/2022. Over which, this criminal revision has been filed.

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3.Heard both sides.

4.A short point that has been raised by the petitioner by relying upon the judgment of this court in the case of P.Sathish @ Sathish Kumar Vs. State [(2019)2 MLJ (Criminal) 556, wherein elaborate procedure has been prescribed to be followed by the Executive Magistrate, while adjudicating the issue. It appears that the witnesses have appeared, but there was no cross examination by the petitioner. But it was submitted before the court that the documents were not furnished to him and no chance was given to engage an Advocate on behalf of the petitioner. It also appears that the above said order has been passed by the first respondent, which is not in compliance of the above said decision of this court rendered in the case of P.Sathish @ Sathish Kumar Vs. State [(2010)2 MLJ (Criminal) 556].

5.Apart from that, another fact is that whether the first respondent, who is holding the post of Deputy Commissioner of Police is competent to exercise the power of the Executive Magistrate is also a matter for consideration by this court in the case of Devi Vs. The



Executive Magistrate, in CrI.RC No.78 of 2020, dated 25/09/2020 and the Coordinate Bench of this court referred the matter for consideration to a Larger Bench. So the power of the Deputy Commissioner of Police has also been under challenge now.

6.So for the above said reasons, the competent authority is liberty to invoke by initiating proceedings in accordance on the principles as cited in **Sathish Kumar's** case.

7.In the result, the criminal revision is **allowed**. The impugned order passed by the first respondent, dated 04/08/2022 is set aside.

20/01/2023

Index:Yes/No
Internet:Yes/No
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To,

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1. The Executive Magistrate and
Deputy Commissioner of Police (South),
Madurai City.
2. The Inspector of Police,
B1-Villakuthoon Police Station,
Madurai City.
3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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Cr1.RC(MD)No.975 of 2022

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