



Crl.R.C.(MD).No.1258 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.11.2023

Delivered on : 27.11.2023

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THE HONOURABLE MR. JUSTICE P.VADAMALAI

Crl.R.C.(MD).No.1258 of 2023

and

Crl.M.P(MD).No.15909 of 2023

Mohammed Ishak

.. Petitioner

Vs.

1.The Executive Magistrate Cum Tahsildar,
Kulathur Taluk,
Illupur Sub Division,
Pudukkottai District.

2.The Inspector of Police,
Mathur Police Station,
Pudukkottai District.

3.The Inspector of Police,
Mandaiyur Police Station,
Pudukkottai District.

4.The Superintendent of Prison,
Central Prison,
Trichy.

... Respondents



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PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the order of the first respondent by proceedings in M.C.No.41/2023/A5 dated 03.11.2023 and set aside the same as illegal and allow the above Criminal Revision Petition.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.S.Sanjay Gandhi
Government Advocate (Crl. Side)

ORDER

This Criminal Revision is filed to call for the records relating to the order of the first respondent by proceedings in M.C.No.41/2023/A5 dated 03.11.2023 and set aside the same as illegal and allow the above Criminal Revision Petition.

2. The impugned order passed by the first respondent wherein, the petitioner was arrested on 24.10.2023 and detained under Section 122(1)(b) of Cr.P.C for the violation of bond condition executed under Section 110 of Cr.P.C dated 06.10.2023, he involved in the offence after executing the bond under Section 110(e) of Cr.P.C. Aggrieved by the said order, the petitioner has preferred the present revision.



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3. The learned counsel appearing for the petitioner would submit the first respondent has no jurisdiction to pass the impugned order under Section 122 (1)(b) of Cr.P.C for which, he placed reliance of the Hon'ble Division Bench judgment in **P.Sathish @ Sathish Kumar Vs. State** reported in **2023 (1) MWN (Crl.) 499** and he seeks to set aside the impugned order.

4. The learned Government Advocate (Crl. Side) submitted that against the above said order they are going to file SLP before the Hon'ble Supreme Court.

5. This Court considered the rival submission made by both parties.

6. The issue in this case is that *whether the first respondent has jurisdiction to pass impugned order under Section 122(1)(b) of Cr.P.C against the petitioner.* The said issue was answered by the Hon'ble Division Bench judgment in **P.Sathish @ Sathish Kumar Vs. State** reported in **2023 (1) MWN (Crl.) 499** negatively in the following terms:-



“88. Now that we have ousted the camel and put the canopy of justice back to where it belongs, our answers to the questions formulated in paragraph 2 are as under:

(a) GO.Ms. No. 659, dated 12.09.2013 and GO.Ms. No. 181, dated 20.02.2014 vesting Deputy Commissioners of Police with the powers of an Executive Magistrate for the purposes of Section 107 to 110 Cr.P.C., suffer from manifest arbitrariness and violates the principle of separation of powers under the Constitution. The GO's are consequently violative of Articles 14, 21 and 50 of the Constitution of India and the proviso to Section 6 of the Madras District Police Act. Resultantly, we declare GO.MS. No. 659, dated 12.09.2013 and GO.MS. No. 181, dated 20.02.2014 as unconstitutional and ultra vires the aforesaid provisions. Consequently, the status quo ante that prevailed prior to the issuance of GO.MS. No. 659, dated 12.09.2013 and GO.MS. No. 181, dated 20.02.2014 stands restored forthwith.

(b) Ex-consequenti, the decision in Balamurugan v. State, MANU/TN/2058/2016, will stand overruled.

(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 (MANU/TN/5284/2020 : 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.

(d) GO.Ms. No. 659, dated 12.09.2013 and GO.Ms. No. 181, dated 20.02.2014 were issued only in exercise of powers under Section 20(1) of the Cr.P.C., and these Government Orders have been held to be unconstitutional. And;



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(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 v. State of Uttar Pradesh MANU/SC/0059/1981 : (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 challaned or prosecuted before the Judicial Magistrate for inquiry and punishment under Section 122(1)(b) Cr.P.C.”

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92.In the light of the law declared in paragraph 88 (e), supra, orders passed even by the Revenue Authorities acting as Executive Magistrates, by exercising powers under Section 122(1)(b) Cr.P.C., will have to be quashed.

7.In view of the above ratio, this Court is inclined to set aside the impugned order passed by the first respondent in M.C.No.41/2023/A5 dated 03.11.2023 and accordingly, this Criminal Revision Case stands allowed. Consequently, the connected miscellaneous petition is closed. The petitioner is ordered to be released forthwith, if his presence is not otherwise required in connection with any other case.

27.11.2023

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

- 1.The Executive Magistrate Cum Tahsildar,
Kulathur Taluk,
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- 2.The Inspector of Police,
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Pudukkottai District.
- 3.The Inspector of Police,
Mandaiyur Police Station,
Pudukkottai District.
- 4.The Superintendent of Prison,
Central Prison,
Trichy.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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P.VADAMALAI, J

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