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CrI.R.C.No.232 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.232 of 2024 and
CrI.M.P.No.2080 of 2024

L.Ex.Con.Syed Yasin

... Petitioner

Vs.

1.The Executive Magistrate-cum-Deputy Commissioner of Police,
Triplicane District,
Chennai.

2.The State Represented by
The Inspector of Police,
D-1, Triplicane Police Station,
Chennai-600 002.

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set-aside the impugned order dated 13.12.2022 in M.P.No.32 of 2022 in RC.No.297/Sec.Pro/DCP Triplicane/2022 in D-1, Triplicane PS. SL.No.11/2022 U/s.109 Cr.P.C passed by the 1st respondent.

For Petitioner : Mr.T.Elumalai

For Respondent : Mr.C.E.Pratap,
Government Advocate (CrI. Side)



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ORDER

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Challenging the order passed by the first respondent under Section 122(1)(b) Cr.P.C. in M.P.No.32 of 2022 in RC.No.297/Sec.Pro/DCP Triplicane/2022 in D-1, Triplicane PS. SL.No.11/2022 dated 13.12.2022, the present revision petition is filed.

2.The grounds assailed by the petitioner is that the order passed by the first respondent is erroneous, not maintainable in law and against the settled position of law. The learned counsel for the petitioner relied upon the law laid down by the Apex Court in the case of ***Gulam Abbas vs. state of Uttar Pradesh*** reported in ***[1982] 1 SCC 71*** and he also placed reliance on the decision of this Court in the case of ***Devi vs. Executive Magistrate*** reported in ***[2020] 6 CTC 157***. The learned counsel further referred to the order of the Division Bench of this Court in the case of ***P.Sathish @ Sathish Kumar vs. The Inspector of Police, Law and Order, H-4 Korukkupet Police Station, Chennai and another in Crl.RC.No.137 of 2018 batch dated 13.03.2023*** and submitted that the Executive Magistrate cannot authorize imprisonment under Section 122(1)(b) Cr.P.c. for violation



of a bond under Section 109 Cr.P.C. and 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. Following the order of the Division Bench, the learned Single Judge of this Court has set aside the proceedings of the Executive Magistrate in ***Crl.RC.No.268 of 2023 dated 20.06.2023 [Kozhi Raja @ Raja vs. The Executive Magistrate and Deputy Commissioner of Police, North, Coimbatore City, Coimbatore]***. Hence, he prayed for setting aside the order passed by the Executive Magistrate.

3.The learned Additional Public Prosecutor appearing for the respondent submitted that the petitioner is a habitual offender who was causing disturbance to the public and also to the traffic. Hence, proceedings has been initiated under Section 109 Cr.P.C., he was produced before the first respondent on the same day and the first respondent obtained a bond from the petitioner on 06.10.2022 for good behaviour for three years. After executing the bond, the petitioner involved in another case in Crime No.323 of 2022 for offence under Section 379 of IPC wherein the complaint was



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lodge by one S.Thavuth Basha stating that on 09.11.2022, at about 10.00 p.m., when the complainant parked his vehicle viz., Yamaha R15 V4 Black Colour bearing Reg.No.TN 06 AC 6099 and went to his house, then on 10.11.2022, at about 11.30 hours, the complainant found the vehicle was found missing. Based on which, FIR registered and during investigation, it came to light that the petitioner committed the offence. Since the petitioner has violated the condition, enquiry conducted by the second respondent and an order was passed by the first respondent under Section 122(1)(b) Cr.P.C. keeping the petitioner under confinement for remaining 1054 days.

4.He further submitted that Special Leave Petition was filed before the Hon'ble Supreme Court against the order of the Division Bench in Crl.RC.No.137 of 2018 batch in Crl.A.No.682 of 2024 [SLP(Crl.) No.012075/2023]. The SLP was admitted and notice ordered, but no stay granted.

5.Considering the submissions made and on perusal of the materials available on record, it is seen that the Division Bench of this Court in



Crl.RC.No.137 of 2018 batch dated 13.03.2023, in paragraph No.88(e) has held as follows:

*88.(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 (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.*

6.It is seen that the first respondent directed the petitioner to be in confinement for remaining 1054 days. It is further seen that a cryptic order was passed by the first respondent which is not proper. In any event, in view of the order of the Division Bench of this Court in Crl.RC.No.137 of 2018 batch dated 13.03.2023, the first respondent cannot authorize imprisonment under Section 122(1)(b) Cr.P.C for violation of bond under Section 109 Cr.P.C. Accordingly, this Criminal Revision Case is allowed



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and the impugned order dated 13.12.2022 passed by the first respondent in M.P.No.32 of 2022 in RC.No.297/Sec.Pro/DCP Triplicane/2022 in D-1, Triplicane PS. SL.No.11/2022 is set aside. The petitioner is directed to be released forthwith, if he is not required in any other case. Consequently, connected miscellaneous petition is closed.

04.03.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

- 1.The Executive Magistrate-cum-Deputy Commissioner of Police,
Triplicane District,
Chennai.
- 2.The Inspector of Police,
D-1, Triplicane Police Station,
Chennai-600 002.
- 3.The Superintendent,
Central Prison, Puzhal.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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