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CrI.R.C.No.181 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

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THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

CrI.R.C.No.181 of 2024

and

CrI.M.P.No.1539 of 2024

Godwin Moses @ Gadis
S/o.Rajendran

... Petitioner/Accused

Vs.

1.The State rep by its
The Sub Divisional Executive Magistrate
and Revenue Divisional Officer,
Vaniyambadi,
Tirupathur District.

2.The Inspector of Police,
Vaniyambadi Taluk Police Station,
Tirupathur District.

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records pertaining of proceedings in Na.Ka.A3.2242/2023 dated 25.01.2024 passed by the 1st respondent and set aside the same by allowing this revision petition.

For Petitioner : Mr.D.Balaji



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For Respondents : Mr.S.Raja Kumar
Additional Public Prosecutor

ORDER

Challenging the order passed by the first respondent under Section 122(1)(b) of Cr.P.C. in Na.Ka.A3.2242/2023 dated 25.01.2024, 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 107 Cr.P.C. and 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. 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 respondents submitted that the petitioner is a habitual offender who was causing disturbance to the public. Hence, proceedings has been initiated under Section 110 Cr.P.C., he was produced before the first respondent on the same day and the first respondent obtained a bond from the petitioner for good behaviour for one year. Thereafter, on 15.11.2023 at about 09.00 p.m., one Murali was murdered by one Santhosh and others. Thereafter, a case in Crime No.293/2023 for the offence under Sections 201, 294(b), 302, 34, 341, 506(ii) of IPC @ 120(b), 201, 294(b), 302, 34, 341, 506(ii) of IPC



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registered. The petitioner was arrested on 18.11.2023 and he was produced before the first respondent. 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 till 07.11.2024.

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 till 07.11.2024. 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 CrI.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 110 Cr.P.C. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 25.01.2024 passed by the first respondent in Na.Ka.A3.2242/2023 is set aside. The petitioner is directed to be released forthwith, if he is not required in any other case. Consequently, connected criminal miscellaneous petition is closed.



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Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

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- 1.The Sub Divisional Executive Magistrate
and Revenue Divisional Officer,
Vaniyambadi,
Tirupathur District.
- 2.The Inspector of Police,
Vaniyambadi Taluk Police Station,
Tirupathur District.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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