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CrI.R.C.No.405 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

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

CrI.R.C.No.405 of 2024

and

CrI.M.P.No.3771 of 2024

J.Sivan Raj
S/o.Jaishankar

... Petitioner/Detenuue

Vs.

1.The State of Tamil Nadu
Rep. by the Sub Divisional Magistrate/
Revenue Divisional Officer,
Sirkali Taluk,
Mayiladuthurai District.

2.The State of Tamil Nadu,
Rep. by The Inspector of Police,
Perambur Police Station,
Mayiladuthurai District.

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order passed by the 1st respondent in M.C.No.154/2023/A2, dated 19.01.2024 passed under Section 122(1)(b) r/w 111 and 117 Cr.P.C.



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For Petitioner : Mr.U.Kathiravan

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

ORDER

Challenging the order passed by the first respondent under Section 122(1)(b) r/w 111, 117 of Cr.P.C. in M.C.No.154/2023/A2 dated 19.01.2024, the present revision petition is filed.

2.The petitioner was detained on the orders passed by the first respondent dated 19.01.2024 directing the petitioner to be detained till 28.12.2024 invoking powers under Section 122(1)(b) r/w 111, 117 of Cr.P.C.

3.The contention of the petitioner is that the second respondent police alleged that the petitioner had been constantly involving himself in criminal activities. Hence, the petitioner was sought to execute a bond that he will not indulge in any activities causing disturbance to the public peace and tranquility. Accordingly, a bond under Section 110 Cr.P.C was obtained on



29.12.2023 for a period of one year. This being so, the petitioner is said to have involved in offence under Tamilnadu Prohibition Act on 02.01.2024 and a case was registered in Crime No.03 of 2024 by the Perambur Police Station, Mayiladuthurai District. Hence, for violation of the bond, proceedings have been initiated before the first respondent and the first respondent passed the impugned order.

4.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



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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 ***CrI.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.

5.The Additional Public Prosecutor appearing for the respondents 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 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 on 29.12.2023 for good behaviour for one year. Thereafter,



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on 02.01.2024 at about 13.00 hours, when the Inspector of Police, Perambur Police Station along with his team were in the routine checkup near Kiliyanur Melatheru, the petitioner was found in illegal possession of 10 litres of illicit arrack in a polythene bag. Thereafter, a case in Crime No.03/2024 for the offence under Sections 4(1)(a) r/w 4(1-A) of TNP Act registered against the petitioner. Thereafter, the petitioner was arrested on 02.01.2024 and he was produced before the first respondent. Since the petitioner has violated the bond condition, enquiry was conducted by the second respondent and an order was passed by the first respondent under Section 122(1)(b) r/w 111, 117 Cr.P.C. keeping the petitioner under confinement till 28.12.2024.

6.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.



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7.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.*

8.It is seen that the first respondent directed the petitioner to be in confinement till 28.12.2024. 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 Crl.RC.No.137 of 2018 batch dated 13.03.2023, the first respondent cannot authorize imprisonment



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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 19.01.2024 passed by the first respondent in M.C.No.154/2023/A2 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.

06.03.2024

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

1.The Sub Divisional Magistrate/
Revenue Divisional Officer,
Sirkali Taluk,
Mayiladuthurai District.

2.The Inspector of Police,
Perambur Police Station,
Mayiladuthurai District.

3.The Superintendent,
Central Prison, Trichy.

4.The Public Prosecutor,
High Court, Madras.

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