



Crl.R.C.No.851 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.851 of 2020

Arivazhagan

... Petitioner

Vs.

State Represented by

1.The Executive Magistrate - cum-
Sub Collector,
Kallakurichi & District.

2.The Inspector of Police,
Kallakurichi Police Station,
Kallakurichi & District.

... Respondents

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code 1973 set aside the order made in Na.Ka.A3/1282/2020 vide an order dated 05.09.2020 on the file of the first respondent.

For Petitioner : Mr.R.Prabudoss

For Respondents : Mr.S.Rajakumar

Additional Public Prosecutor



CrI.R.C.No.851 of 2020

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ORDER

Challenging the orders dated 05.09.2020 in Na.Ka.A3/1282/2020 passed by the Executive Magistrate - cum- Sub Collector, Kallakurichi District, the present revision is filed.

2. The learned counsel for the revision petitioner would submit that the first respondent had initiated proceedings against the petitioner u/s.110 Cr.P.C. and directed him to execute a bond under Section 117 Cr.P.C. for good behaviour on 11.06.2020 for a sum of Rs.25,000/- for a period of one year. Subsequently, a case was registered against the present revision petitioner in Crime No.2025/2020 of Kallakurichi Police Station, Kallakurichi District for the offences punishable u/s.394, 397 IPC. Since the revision petitioner violated the condition of the bond which he executed u/s.117 Cr.P.C, the Executive Magistrate - cum- Sub Collector, Kallakurichi District initiated proceedings u/s.122(1)(b) Cr.P.C. and remanded the petitioner to undergo imprisonment until the expiry of the period of bond.



Crl.R.C.No.851 of 2020

WEB COPY

3. A Division Bench of this Court in ***Crl.R.C.No.137/2018 batch cases*** dated 13.03.2023 ***[P.Sathish @ Sathis Kumar Vs. State Rep. by the Inspector of Police, Law and Order, H-4, Korukkupet Police Station, Chennai]***, relied on the judgement of the Hon'ble Supreme Court reported in ***(1982) 1 SCC 71 [Gulam Abbas Vs State of Uttar Pradesh]***. In paragraph 80 (e) of the said order dated 21.06.2023, it has been held as follows:-

"80 (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 Vs State of Uttar Pradesh (1982) 1 SCC 71, an Executive Magistrate cannot authorize imprisonment under Section 123(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 challenged or prosecuted before the Judicial Magistrate for inquiry and punishment under Section 122(1)(b)Cr.P.C?"



CrI.R.C.No.851 of 2020

WEB CODE

Thus it is very clear from the decision of the Division Bench of this Court that the first respondent is not the competent authority to impose any punishment u/s.122(1)(b) Cr.P.C. Therefore, the impugned order passed by the first respondent is liable to be set aside.

4. With the above observations, the present Criminal Revision is allowed. Consequently, connected Criminal Miscellaneous Petition is closed. The orders dated 05.09.2020 in Na.Ka.A3/1282/2020 on the file of the Executive Magistrate - cum- Sub Collector, Kallakurichi District, is set aside.

01.04.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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CrI.R.C.No.851 of 2020

To

State Represented by

1.The Executive Magistrate - cum-
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2.The Inspector of Police,
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Crl.R.C.No.851 of 2020

R. HEMALATHA, J.
mtl

Crl.R.C.No.851 of 2020

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