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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

Crl.RC.No.1138 of 2024
and
Crl.MP.No.9534 of 2024

Joseph Vijay ...Petitioner

Vs.

1. The Executive Magistrate
   cum Revenue Divisional Officer,
   Tiruvallur, Tiruvallur District.

2. State rep. by,
   The Inspector of Police,
   T-12, Poonamallee Police Station,
   Tiruvallur District. ...Respondents

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C, praying to call for the records in respect of the impugned order passed by the Hon'ble Executive Magistrate cum Revenue Divisional Officer/1st respondent in NaKa No.2439/2024/A1, dated 02.05.2024 and set aside the same.

For Petitioner : M/s.R.Radha Pandian

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.Side)

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ORDER

This Criminal Revision Case has been filed seeking quashment of the order of the 1st respondent dated 02.05.2024 in NaKa No.2439/2024/A1.

2. The case of the petitioner is that, the petitioner executed a bond for good behaviour under Section 110 of Cr.P.C. before the 1st respondent on 12.04.2024 and subsequently it is alleged that the petitioner involved in Crime No.292 of 2024 for the offence under Sections 341, 294(b), 324, and 506(ii) of IPC and he was arrested and kept under judicial custody. In view of the criminal case fastened against the petitioner, the bond executed by the petitioner was cancelled vide impugned order dated 02.05.2024 by the first respondent and by exercising the power under Section 122(1)(b) of Cr.P.C., the first respondent issued warrant to detain the petitioner. Challenging the same, the present revision has been filed.

3. The learned counsel for the petitioner further submitted that the Executive Magistrate has no power to detain the petitioner for breach of bond under Section 120 of Cr.P.C. and the learned Judicial Magistrate alone can pass orders after conducting enquiry by invoking the power under Section 446 of Cr.P.C. for forfeiture of bond. He further submitted that the

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issue arise in this revision is no longer res integra and is covered by the decision of the Division Bench of this Court reported in ***2023 1 L.W.(Crl.) 810 [P.Sathish @ Sathish Kumar Vs. State rep. by the Inspector of Police - Law and Order and another]***. Accordingly, he prayed for allowing this revision.

4. The learned Government Advocate (Crl. Side) did not dispute the fact submitted by the learned counsel for the petitioner, however submitted that as against the order passed by the Division Bench of this Court, SLP is pending before the Apex Court.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Crl. Side) appearing for the respondents.

6. It is useful to extract hereunder the relevant portions of the decision of the Division Bench of this Court reported in ***2023 1 L.W.(Crl.) 810 [P.Sathish @ Sathish Kumar Vs. State rep. by the Inspector of Police - Law and Order and another]***:

"32.The question then is whether the Executive

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Magistrate can proceed to authorize detention under Section 122(1)(b) if it is proved that a bond executed under Section 107 to 110, pursuant to an order under Section 117, has been breached. Section 122(1)(b) reads as follows:

> *"(b) If any person after having executed a bond, [with or without sureties] without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law."*

We have already concluded that the breach of a bond under Section 122(1)(b) would result in initiation of proceedings under Section 446 Cr.PC., for forfeiture and recovery of the sum covered by the bond. Thus, only a bond executed under Section 107 pursuant to an order under Section 117 comes within the net of this provision. Section 122(1)(b) does not use the expression Executive Magistrate, but merely states "Magistrate". Section 3(1)(a) of the Code reads as follows:

> *"3. Construction of references.--(1) In this Code,--*
> *(a) any reference, without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires, --*
> *(i) in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate;*
> *(ii) in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;....."*

Therefore, where the Code merely uses the expression

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Magistrate it must be read, unless the context otherwise requires, as referring to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be. The question is whether the meaning of the expression "Magistrate" in the context of Section 122(1)(b) warrants a departure from the aforesaid construction.

33.It is no doubt true that Section 122(1)(b) read literally requires proof of breach to be proved before "such Magistrate or his successor-in-office" before whom the bond was executed under Section 117. The larger question, however, is whether an Executive Magistrate is invested with powers under the Code to inflict punishment. Our attention was invited by the Amicus Curiae to Section 167(2-A) of the Code which authorizes the detention of an accused by an Executive Magistrate. It was pointed out that to exercise powers of detention Section 167 (2-A) requires that an Executive Magistrate must be specifically invested with the powers of a Judicial or Metropolitan Magistrate. This can be done by the High Court on a request made by the State Government under Sections 13 or 18 of the Code. This itself would show that the detention of a person, which is an interference with his personal liberty, cannot be done by an Executive Magistrate without being specially invested with the powers of a Judicial Magistrate.

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

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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, 2016 SCC Online Mad 23460, 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 (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 ;

(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."

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7. Considering the facts and circumstances of the case and in view of the decision rendered by the Division Bench of this Court reported in ***2023 1 L.W.(Crl.) 810 [P.Sathish @ Sathish Kumar Vs. State rep. by the Inspector of Police - Law and Order and another]***, particularly, paragraph no.88(c), the Executive Magistrate has no power to detain the petitioner for breach of bond and the learned Judicial Magistrate alone can pass orders after conducting enquiry by invoking the power under Section 446 of Cr.P.C. for forfeiture of bond. Hence, the impugned order is liable to be set aside and accordingly, the same is set aside.

8. Accordingly, this Criminal Revision Case is allowed. Consequently, in view of the above order passed by this court, no order needs to be passed in the connected Criminal Miscellaneous Petition in Crl.MP.No.9534 of 2024, accordingly, the same is closed.

9. It is reported that the revision petitioner is in jail in connection with this case. The revision petitioner, who is presently detained in the Central Prison, Puzhal, Chennai is directed to be released forthwith unless

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his presence is required in connection with any other case.

04.07.2024

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Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

Note: Issue order copy on 04.07.2024.

To

1. The Executive Magistrate
cum Revenue Divisional Officer,
Tiruvallur, Tiruvallur District.

2. State rep. by,
The Inspector of Police,
T-12, Poonamallee Police Station,
Tiruvallur District.

3. The Public Prosecutor,
Madras High Court, Chennai.

4. The Central Prison,
Puzhal, Chennai.

M.DHANDAPANI, J.

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