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Crl.R.C.No.1750 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1750 of 2023
and Crl.MP.No.16639 of 2023

Mathi @ Mathiyazhagan

... Petitioner

Vs.

1.The Sub Divisional Magistrate cum
Revenue Divisional Magistrate,
Mettur, Salem District.

2.The State represented by
The Inspector of Police,
Karumalaikoodal Police Station,
Salem District.

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records culminating in M.C.No.36 of 2023 in Na.Ka.3111/2023/D on the file of the learned Sub Divisional Magistrate cum Revenue Divisional Magistrate, Mettur vide order dated 18.08.2023 and set aside the same.

For Petitioner : Mr.Sanjay N Gandhi

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)



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ORDER

Challenging the order passed by the first respondent under Section 122(1)(b) Cr.P.C. in M.C.No.36 of 2023 in Na.Ka.3111/2023/D dated 18.08.2023, 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



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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 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 Government Advocate (Crl. Side) 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 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 23.06.2023 at about 18.30 hours, one G.Jothimeena lodged a complaint stating that her daughter, aged about 16 years studying 12th Standard went to school on



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22.06.2023 but she had not returned home. She searched the victim girl in nearby places but she could not be traced. She further stated that the victim girl may be abducted by the petitioner. Based on her complaint, the respondent police registered a case in Crime No.178 of 2023 under Section 366(A) IPC r/w. Sections 7 and 8 of POCSO Act. Thereafter, enquiry conducted, the petitioner admits that he was in love with the victim girl, he took her to his house with an intention to marry and since his family members objected for the same, he took her to Palani. The petitioner was arrested 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 29.01.2024.

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.



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5.Considering the submissions made and on perusal of the materials available on record, it is seen that by impugned order the petitioner was directed to be in confinement till 29.01.2024. Now the period of confinement completed. Hence, nothing survives in this petition. No further order is required.

6.In view of the above, this Criminal Revision Case stands disposed of. Consequently, connected miscellaneous petition is closed.

01.03.2024

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

cse

To

- 1.The Sub Divisional Magistrate cum
Revenue Divisional Magistrate,
Mettur, Salem District.
- 2.The Inspector of Police,
Karumalaikoodal Police Station,
Salem District.
- 3.The Public Prosecutor,



High Court, Madras.

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M.NIRMAL KUMAR, J.

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