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CrI.R.C.No.1915 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1915 of 2023
and
CrI.M.P.No.17847 of 2023

Dinesh @ Deenu

... Petitioner

Vs.

1.The Tambaram Sub Divisional Magistrate cum
Revenue Divisional Officer,
Tambaram City.

2.State by
The Inspector of Police,
T-3 Pallavaram Police Station,
Tambaram City.

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records on the file of the Sub Divisional Magistrate cum Revenue Divisional Officer, Tambaram City in M.C.No.2669 of 2023 dated 29.09.2023 under Section 110 Cr.P.C. and set aside the same.



Crl.R.C.No.1915 of 2023

For Petitioner : Mr.S.Senthilvel

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

ORDER

Challenging the order passed by the first respondent under Section 122(1)(b) Cr.P.C. in M.C.No.2669 of 2023 dated 29.09.2023, 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 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 23.07.2023



one P.Sankar lodged a complaint before the second respondent police stating that when he was working in the shop of one Kaja Mohideen, the petitioner along with other accused came there, abused the said Kaja Mohideen, threatened him and assaulted him with knife. When the said P.Sankar tried to prevent the said Kaja Mohideen, due to which, the said P.Sankar sustained injury on his face and head. Based on the above complaint, a case was registered against the accused persons in Crime No.511/2023 for the offence under Sections 294(b), 323, 324 and 506(ii) IPC. Thereafter, the petitioner was arrested and 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 23.05.2024.

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 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 23.05.2024. In any event, in view of the order of the Division Bench of this Court in Crl.RC.No.137 of 2018 batch dated



Crl.R.C.No.1915 of 2023

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 29.09.2023 passed by the first respondent in M.C.No.2669 of 2023 is set aside. The petitioner is directed to be released forthwith, if he is not required in any other case. Consequently, connected miscellaneous petition is closed.

01.03.2024

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

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CrI.R.C.No.1915 of 2023

To

- 1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Madurantakam Taluk,
Chengalpet District.
- 2.The Inspector of Police,
G-1 Madurantakam Police Station,
Chengalpet District.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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CrI.R.C.No.1915 of 2023

M.NIRMAL KUMAR, J.

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CrI.R.C.No.1915 of 2023

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