



Crl.R.C.No.2232 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2232 of 2023 and
Crl.M.P.No.19995 of 2023

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... Petitioner

Vs.

1.The Sub Divisional Magistrate Cum Revenue Divisional Officer,
Mayiladuthurai,
Mayiladuthurai District.

2.The State represented by
Inspector of Police,
Manalmedu Police Station,
Mayiladuthurai District.
(Crime No.360 of 2023).

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside order dated 17.10.2023 made in M.C.No.104/2023/A1 on the file of the Sub Divisional Magistrate Cum Revenue Divisional Officer, Mayiladuthurai by allowing this criminal revision petition.



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For Petitioner : Mr.T.Balaji

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.104/2023/A1, dated 17.10.2023, 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 05.09.2023, the petitioner involved in another case in Crime No.360 of 2023 for offence under Sections 294(b), 353, 336, 506(ii) of IPC r/w 25(1)(b), 27(1) of Arms Act alleging that while the Police were in routine vehicle checkup, the vehicle bearing Reg.No.TN 10 S 8533 was intercepted and searched. During the search, A1 and the driver of the car/petitioner/A2 had not given proper explanation regarding the possession of two long Aruval inside the car. Based on the FIR in Crime No.360 of 2023, the Police arrested the A1 and the petitioner/A2 and remanded to judicial custody on 05.09.2023. 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 31.07.2024.

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 31.07.2024. In any event, in view of the order of the Division Bench of this Court in Crl.RC.No.137 of 2018 batch dated



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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 17.10.2023 passed by the first respondent in M.C.No.104/2023A1 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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To

- 1.1.The Sub Divisional Magistrate Cum Revenue Divisional Officer,
Mayiladuthurai,
Mayiladuthurai District.
- 2.The Inspector of Police,
Manalmedu Police Station,
Mayiladuthurai District.
- 3.The Superintendent,
Sub Jail,
Mayiladuthurai.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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