



Crl.R.C.(MD).Nos.391, 392 and 393 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C.(MD).Nos.391, 392 and 393 of 2023

Crl.R.C.(MD).No.391 of 2023

Vignesh

... Petitioner /Respondent

Vs.

1.The Executive Magistrate Cum Tahsildar,
Kulathur Taluk,
Illupur Sub-Division,
Pudukkottai District.

2.The Inspector of Police,
Mathur Police Station,
Pudukkottai District.
(LIR No.18/22 Dated 12.12.2022)

3.The Inspector of Police,
Navalpattu Police Station,
Trichy.

4.The Superintendent of Prison,
Central Prison,
Trichy.

... Respondents/Petitioner



Crl.R.C.(MD).Nos.391, 392 and 393 of 2023

PRAYER : Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the order of the 1st respondent by proceedings in M.C.No.4/2023 dated 29.03.2023 and set aside the same as illegal and allow the above Criminal Revision Petition as prayed for.

Crl.R.C.(MD).No.392 of 2023

Jeya Prakash

... Petitioner /Respondent

Vs.

1.The Executive Magistrate Cum Tahsildar,
Kulathur Taluk,
Illupur Sub-Division,
Pudukkottai District.

2.The Inspector of Police,
Mathur Police Station,
Pudukkottai District.
(LIR No.8/22 Dated 02.09.2022)

3.The Inspector of Police,
Navalpattu Police Station,
Trichy.

4.The Superintendent of Prison,
Central Prison,
Trichy.

... Respondents/Petitioner



Crl.R.C.(MD).Nos.391, 392 and 393 of 2023

PRAYER : Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the order of the 1st respondent by proceedings in M.C No.5/2023 dated 29.03.2023 and set aside the same as illegal and allow the above Criminal Revision Petition as prayed for.

Crl.R.C.(MD).No.393 of 2023

Sathish Kumar

... Petitioner /Respondent

Vs.

1.The Executive Magistrate Cum Tahsildar,
Kulathur Taluk,
Illupur Sub-Division,
Pudukkottai District.

2.The Inspector of Police,
Mathur Police Station,
Pudukkottai District.
(LIR No.9/22 Dated 11.10.2022)

3.The Inspector of Police,
Navalpattu Police Station,
Trichy.

4.The Superintendent of Prison,
Central Prison,
Trichy.

... Respondents/Petitioner



Crl.R.C.(MD).Nos.391, 392 and 393 of 2023

PRAYER : Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the order of the 1st respondent by proceedings in M.C.No.6/2023 dated 29.03.2023 and set aside the same as illegal and allow the above Criminal Revision Petition as prayed for.

For Petitioner : Mr.M.Saravanan
(In all cases)

For Respondents : Mr.R.Sivakumar
Government Advocate (Crl. Side)
(In all cases)

COMMON ORDER

These Criminal Revisions are filed to set aside the orders passed by the first respondent herein in M.C.Nos.4, 5 and 6 of 2023, dated 29.03.2023.

2.The impugned orders passed by the first respondent wherein, the petitioners were arrested on 28.03.2023 and detained under Section 122(1) (b) of Cr.P.C for the violation of bond condition executed under Section 110(e) of Cr.P.C, they involved in the offence after executing the bond under



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Section 110(e) of Cr.P.C. Aggrieved by the said order, the petitioners have preferred the present revision.

3.The learned counsel appearing for the petitioners would submit the first respondent has no jurisdiction to pass the impugned orders under Section 122(1)(b) of Cr.P.C for which, he placed reliance of the Hon'ble Division Bench judgment in **P.Sathish @ Sathish Kumar Vs. State** reported in **2023 (1) MWN (Crl.) 499** and he seeks for quashment of impugned orders.

4.The learned Government Advocate (Crl. Side) submitted that against the above said orders, they are going to file SLP before the Hon'ble Supreme Court.

5.This Court has considered the rival submission made by both parties.



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6.The issue in these cases is that *whether the first respondent has jurisdiction to pass impugned orders under Section 122(1)(b) of Cr.P.C against the petitioner*. The said issue was answered by the Hon'ble Division Bench judgment in **P.Sathish @ Sathish Kumar Vs. State** reported in **2023 (1) MWN (Crl.) 499** negatively in the following terms:-

“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 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.



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(b) Ex-consequenti, the decision in Balamurugan v. State, MANU/TN/2058/2016, 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 (MANU/TN/5284/2020 : 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 MANU/SC/0059/1981 : (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.In view of the above ratio, this Court is inclined to quash the impugned orders passed by the first respondent in M.C.No.4, 5, 6 of 2023, dated 29.03.2023, and accordingly, these Criminal Revision Cases stand allowed.

26.04.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No

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To

- 1.The Executive Magistrate Cum Tahsildar,
Kulathur Taluk,
Illupur Sub-Division,
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- 2.The Inspector of Police,
Mathur Police Station,
Pudukkottai District.
- 3.The Inspector of Police,
Navalpattu Police Station,
Trichy.
- 4.The Superintendent of Prison,
Central Prison,
Trichy.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

Indu

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