



Crl.R.C.No.391 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.391 of 2023

Ajith @ Sali Ajith

.... Petitioner

Vs

1. The Executive Magistrate and
Deputy Commissioner of Police,
Office of the Assistant Commissioner,
Washermenpet,
Chennai - 600 081.

2. The Inspector of Police
Law and Order,
H-8 Thiruvotriyur Police Station,
Chennai - 600 021.

.... Respondents

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Code of Criminal Procedure to set aside the order of conviction of the petitioner passed by the 1st respondent in M.P No. 02 of 2023 in MC No.452/Sec.Pro/DCPWPT/2022 dated 09.01.2023.

For Petitioner : Mr.C.C.Chellappan

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



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ORDER

This Criminal Revision Case has been filed challenging the order

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dated 09.01.2023 passed in M.P.No.02 of 2023 in M.C. No.452/Sec.Pro/DCPWPT/2022 by the first respondent, thereby the petitioner was ordered to undergo imprisonment for the remaining bond period, which was violated by the petitioner.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. In view of the order passed by the Hon'ble Division Bench of this Court in a batch of criminal revision cases, it has been held that the first respondent has no power to detain the petitioner for breach of bond executed under Section 110 of Cr.P.C. Therefore, the issue involved in the present revision is no longer *res integra* and stands covered by the decision of the Division Bench of this Court reported in **2023(1) LW (Crl) 810** in the case of ***P.Sathish @ Sathish Kumar Vs. State rep. by the Inspector of Police – Law and Order and another***, wherein, this Court held as follows :

“32. The question then is whether the Executive Magistrate can proceed to authorize detention under Section 122(1)(b) if it is proved that a bond executed under Section



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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.P.C., 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 Magistrate it must be read, unless the context otherwise



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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



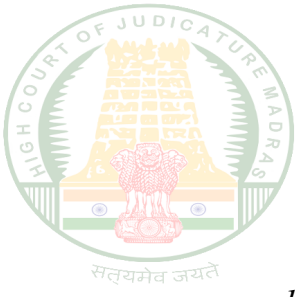
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questions formulated in paragraph 2 are as under:

(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.

(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.



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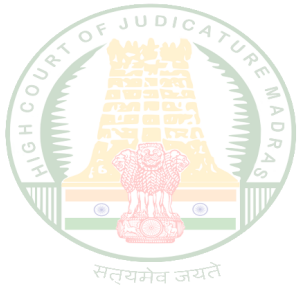
(d) GO.Ms.No.659, dated 12.09.2013 and GO.Ms.No.181, dated 20.02.2014 were issued only in exercise of powers under *Section 20(1)* of the Cr.P.C, and these Government Orders have been held to be unconstitutional.

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 challenged or prosecuted before the Judicial Magistrate for inquiry and punishment under *Section 122(1)(b)* Cr.P.C.”

4. In view of the above discussions, this Court is of the considered opinion that the first respondent has no power to detain the petitioner for breach of bond. Therefore, the order impugned in this revision cannot be sustained and is liable to be set aside. Accordingly, the order dated 09.01.2023 passed in M.P.No.02 of 2023 in M.C. No.452/Sec.Pro/DCPWPT/2022, by the first respondent, is hereby set aside.

5. In the result, this Criminal Revision Case stands allowed.



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03.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

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Office of the Assistant Commissioner,
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2. The Inspector of Police
Law and Order,
H-8 Thiruvotriyur Police Station,
Chennai - 600 021.

3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.



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