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CRL RC No. 1546 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-08-2025

CORAM

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL RC No. 1546 of 2025

Ramakrishnan

S/o.Thillaigovindan.

Petitioner(s)

Vs

1. The Taluk Executive Magistrate cum
Revenue Tahsildar
Bhuvanagiri Taluk, Bhuvanagiri,
Cuddalore District.

2.The State Rep By
The Sub-Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District.

Respondent(s)

PRAYER:Criminal Revision filed under Section 438 r/w 442 of the Bharatiya
Nagarik Suraksha Sanhita, 2023, to call for the records of impugned
proceedings in M.C.No.78/2025 dated 14.06.2025 passed by the 1st respondent
and set aside the same.

For Petitioner(s): Mr.G.Pugazhenth

For Respondent(s): Mr.A.Gopinath,
Government Advocate (Crl.Side)



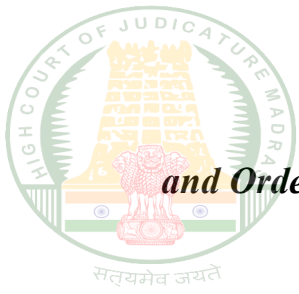
ORDER

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This Criminal Revision has been filed as against the order passed in M.C.No.78 of 2025, dated 14.06.2025, on the file of the first respondent.

2. Heard the learned counsel appearing on either side and perused the materials available on record. A perusal of the order passed by the first respondent reveals that it was passed under Section 128 BNSS, thereby, directing the petitioner to execute a bail bond to maintain peace for one year with a surety for a sum of Rs.50,000/-.

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 :

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“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 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:



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*“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 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



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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 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*, 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.

(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



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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 order passed by the Division Bench of this Court, the first respondent has no power/jurisdiction to pass such order and therefore, the order impugned in this revision cannot be sustained and is liable to be set aside. Accordingly, the order passed in M.C.No.78 of 2025, dated 14.06.2025, by the first respondent, is hereby set aside.

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

26-08-2025

Sli

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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G.K.ILANTHIRAIYAN J.
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To

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Revenue Tahsildar
Bhuvanagiri Taluk, Bhuvanagiri,
Cuddalore District.

2.The State Rep By
The Sub-Inspector of Police,
Bhuvanagiri Police Station, Cuddalore
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