



*Crl.R.C.(MD)No.775 of 2024*

WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 10.03.2025

Pronounced on : 28.03.2025

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

Crl.R.C.(MD)No.775 of 2024

P.Muthusamy

... Petitioner

Vs.

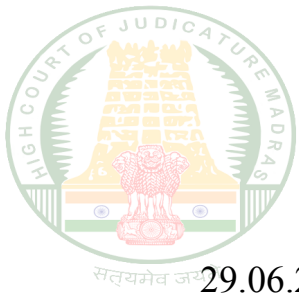
1.The Sub Divisional Magistrate /  
The Revenue Divisional Officer,  
Office of the Revenue Divisional Officer,  
Musiri Revenue Division,  
Trichy District.

2.The Inspector of Police,  
Thuraiyur PEW - Police Station,  
Trichy District.

3.The Superintendent of Prison,  
Central Prison, Trichy,  
Trichy District.

... Respondents

**Prayer** : This Criminal Revision Case filed under Sections 438 r/w 442 B.N.S.S., to call for the records relating to the impugned order passed by the first respondent in his proceedings in न.क.अ2/2726/2024 dated



*Crl.R.C.(MD)No.775 of 2024*

29.06.2024 and to set aside the same and allow the above criminal revision.

For Petitioner : Mr.C.Suresh Kannan

For Respondents : Mr.B.Thanga Aravindh  
Government Advocate (Crl. Side)

### **ORDER**

The Criminal Revision is directed against the order dated 29.06.2024 passed by the first respondent in Na.Ka.A2/2726/2024 under Sections 122(1)(b) r/w 111 of the Code of Criminal Procedure.

2. The first respondent, on the basis of the report of the second respondent, has initiated proceedings under Section 110 Cr.P.C. and conducted enquiry and ordered the petitioner to execute a bond under Section 110 Cr.P.C. on 01.02.2024 and on that basis, the petitioner has been bound over and released, after executing a bond, for maintaining good behaviour for a period of one year viz., from 01.02.2024 to 31.01.2025. Subsequently, a criminal case was registered against the petitioner in Crime No.394 of 2024 for the offences punishable under Sections 4(1)(aaa), 4(1)(g) r/w 4(1-A) TNP Act and the petitioner was arrested on 19.06.2024 and remanded to judicial custody on the same day.



*Crl.R.C.(MD)No.775 of 2024*

WEB COPY

The second respondent, by alleging that the petitioner violated/breached the bond executed by him, has sent a communication, requesting the first respondent to initiate necessary action under Section 122(1)(b) Cr.P.C. Based on the said report of the second respondent, the first respondent issued a show cause notice to the petitioner and directed them to produce the petitioner on 29.06.2024. The first respondent, after enquiry, has passed the impugned order, dated 29.06.2024, cancelling the security bond executed by the petitioner and ordered to detain him in prison until the expiry of the period of bond viz., 31.01.2025. Aggrieved by the said order, the petitioner has preferred the present revision.

3. Heard Mr.C.Suresh Kannan, learned counsel appearing for the petitioner and Mr.B.Thanga Aravindh, learned Government Advocate (Criminal Side) appearing for the respondents.

4. The learned counsel appearing for the petitioner would submit that the petitioner has in no way connected with the alleged occurrence in Crime No.394 of 2024, that the impugned order has been passed without following the procedure laid down by this Court, that the petitioner's right

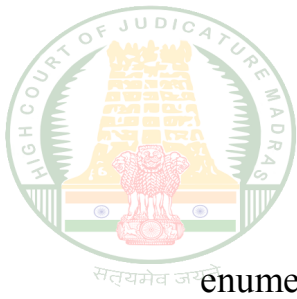


*Crl.R.C.(MD)No.775 of 2024*

WEB COPY

to get legal assistance was denied, that the learned Magistrate has no power to invoke Section 122 (1)(b) Cr.P.C for the violation of the bond executed under Section 110 Cr.P.C and that the personal liberty of the petitioner was seriously affected by the impugned order passed by the first respondent.

5. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the petitioner has been continuously and frequently involving in various criminal activities and caused various problem against the public peace and tranquillity, that during the pendency of the bond period, the petitioner was involved in an offence for which, FIR came to be registered in Crime No.394 of 2024, for the offences punishable under Sections 4(1)(aaa), 4(1)(g) r/w 4(1-A) TNP Act, that since the petitioner has violated the bond, at the instance of the second respondent, the first respondent has initiated the proceedings, that the first respondent after conducting proper enquiry has passed the order on 29.06.2024, cancelling the security bond and ordered to detain him till the expiry of the bond period, that the petitioner is the habitual offender, that the petitioner was given sufficient opportunities as per the procedure



*Crl.R.C.(MD)No.775 of 2024*

WEB COPY

enumerated under Cr.P.C and that therefore, the question of setting aside the order passed by the first respondent does not arise at all.

6. The learned counsel appearing for the petitioner would rely on a decision of the Hon'ble Division Bench of this Court passed in ***Crl.R.C.No.137 of 2018 batch of cases, dated 13.03.2023***. A reference was made to the Hon'ble Division Bench to resolve the conflict between the decisions in ***Vadivel @ Mettai Vadivel Vs. The State (Crl.R.C.No.982 of 2018 etc., batch)*** and in ***Balamurugan Vs. State (2016 SCC Online Mad 23460)*** on the one hand and that of the decision in ***Devi Vs. Executive Magistrate (2020 6 CTC 157)*** on the other hand and the Hon'ble Division Bench, after elaborate discussion, has concluded thus;

*“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*



WEB COPY



Crl.R.C.(MD)No.775 of 2024

*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.*

*(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*



WEB COPY

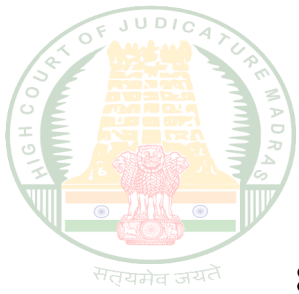


Crl.R.C.(MD)No.775 of 2024

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

7. The Hon'ble Division Bench has specifically observed that an 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 that 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 enquiry and punishment under Section 122(1)(b) Cr.P.C.



*Crl.R.C.(MD)No.775 of 2024*

WEB COPY

8. Considering the legal position above referred, this Court has no hesitation to hold that the impugned order passed by the first respondent cannot legally be sustained. Consequently, this Court concludes that the revision is liable to be allowed.

9. In the result, the Criminal Revision Case stands allowed and the impugned order dated 29.06.2024 passed by the first respondent is hereby set aside. No costs.

**28.03.2025**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
csm

To

- 1.The Sub Divisional Magistrate /  
The Revenue Divisional Officer,  
Office of the Revenue Divisional Officer,  
Musiri Revenue Division,  
Trichy District.
- 2.The Inspector of Police,  
Thuraiyur PEW - Police Station,  
Trichy District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

8/10



WEB COPY



*Crl.R.C.(MD)No.775 of 2024*



WEB COPY



*Crl.R.C.(MD)No.775 of 2024*

**K.MURALI SHANKAR,J.**

csn

**Pre-Delivery Order made in  
Crl.R.C.(MD)No.775 of 2024**

**Dated : 28.03.2025**