



CRL RC(MD). No.1630 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 07/01/2026

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

**CRL RC(MD). No.1630 of 2025
and
CrI.M.P.(MD)No.20147 of 2025**

Muthukaruppan,

... Petitioner

Vs.

1. The Executive Magistrate Cum,
Tahsildar,
Avudaiyarkovil Taluk,
Aranthangi, Pudhukottai District.

2. State of Tamilnadu Rep by
Inspector of Police,
Mimisal Police Station,
Pudhukottai District.
Cr. No.133 of 2025.

... Respondents

PRAYER :- This Petition is filed under Section 438 BNSS, to call for the records pertaining to the impugned order dated 28.11.2025 in M.C. No. 14/2025 passed by the 1st respondent and setaside the same.

For Petitioner : Mr.M.Dinesh Hari Sudarsan,

For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor



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ORDER

Heard, Mr.M.Dinesh Hari Sudarsan, learned Counsel for the Revision Petitioner and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor for Respondents.

2. This Criminal Revision Petition has been filed challenging the order dated 28.11.2025 passed by Executive Magistrate cum Tahsildar, under Section 141 of BNSS, directing imprisonment of petitioner for breach of bond executed under section 129 of BNSS.

3. At the outset, it was submitted that the impugned order may be bad for want of jurisdiction inasmuch as the Executive Magistrate may not have the jurisdiction nor authority to order imprisonment for breach of bond executed under Section 129 BNSS (110 Cr.P.C).

4. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, would submit that issue is no longer *res integra* and has been



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conclusively settled by the Division Bench of this Court in the case of ***P.Sathish @ Sathish Kumar v. State rep. by the Inspector of Police***, reported in ***CDJ 2023 MHC 1826***, wherein several issues of law were raised and considered, including the following questions:

“(ii) Whether the Executive Magistrate concerned can exercise his power under Section 122(1) (b) for violation of bond executed under Section 110 of the Code of Criminal Procedure?

(iii) Whether the power to issue G.O.Ms.No.659, Home (Csts.VIA) Department, dated 12.09.2013 and G.O.Ms.No.181, Home (Cts.VIA) Department, dated 20.02.2014 should be traced to Section 20 Sub-clause 4 and Sub-Clause 5 of the Code of Criminal Procedure, r/w. Sections 6 and 7 of the Madras City Police Act, 1888?”

5. While, considering the above questions, the Hon'ble Division Bench of this Court in ***P.Sathish @ Sathish Kumar's*** case held as under:

“25. The next question is whether an Executive Magistrate has the power to impose sentence under the Code. Though the question was originally formulated in rather



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generic terms, during the course of arguments it was agreed that the issue can be confined to whether imprisonment for breach of a bond executed under Section 107 can be ordered by an Executive Magistrate under Section 122(1)(b). Therefore, the question is whether an Executive Magistrate has power to imprison a person under Section 122(1)(b) for violation of the conditions of the bond executed under Section 107.

26.The contention raised by the State is that Section 122(1)(b) specifically states that where an order of a Magistrate under Section 117 is proved to have been breached “such Magistrate or his successor-in-office” may order arrest and detention until the expiry of the bond period. The expression “such Magistrate” occurring in Section 122(1)(b) could only mean the Magistrate acting under Section 117 which, in the context of a proceeding under Section 107, is an Executive Magistrate. It is, thus, contended that the Code has vested powers with Executive Magistrates under Chapter VIII to authorise detention. Our attention was also drawn to the decision of the Supreme Court in Devadassan v Second Class Executive Magistrate (2022 SCC Online SC 280), wherein an order passed by the



Executive Magistrate detaining a person under Section 122(1)(b) was upheld.

27. The Executive Magistrate is a creation of the Code of Criminal Procedure, 1973. Under the Code of Criminal Procedure, 1898 proceedings under Section 107 could be initiated by a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the First Class. The Code of 1898 did not envisage any separation of functions between the judicial and the executive branches of the State. Consequently, the executive branch as well as the judicial branch could exercise powers under Section 107 and pass orders under Section 118 (present Section 117).

28. In fact, the absence of any separation of judicial and executive functions between the various Courts of Magistrate was one of the primary reasons for the Law Commission to recommend the overhaul of the 1898 Code in its 37th Report. In its 41st Report, the Law Commission recommended that the old nomenclature be done away with and that the Magistracy be reorganised on the lines of Judicial and Executive Magistrates. In the Metropolitan areas, the Code created a class of Magistrates called Metropolitan Magistrates who exercise the



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jurisdiction of Judicial Magistrates in a Metropolitan area (as notified under Section 8). The Law Commission, in its 41st Report, has specifically adverted to the proposed functions of Executive Magistrates under the new Code and had observed as under:

“As regards the Executive Magistrates, we do not see any point in maintaining the distinction of first and second class. The functions to be performed by Executive Magistrates under the Code are very few and they hardly admit of being divided into more important functions that will have to be performed by Executive Magistrates of the first class and less important ones that could be left to junior magistrates put in the second class. In fact, the day-to-day, routine work of an executive magistrate under the Code arising in any sub-division may not require more than one officer to handle- We notice that in Bombay, according to the amendment of the Code made in 1951, executive magistrates are not divided into those of the first class and of the second class nor is there a division of functions between senior and junior magistrates. Provision is made for a category designated Taluka Magistrates who are



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presumably subordinate revenue officers in charge of talukas. We propose that there need be only one class "of executive magistrates under the Code, that the chief officer in charge of the administration of the district (whether known as District Collector, District Officer or Deputy Commissioner) should continue, as at present, to be the District Magistrate, and that the institution of Sub-divisional Magistrates on the executive side should also be retained. If there is need for an executive magistrate at the taluka or tahsil level in any State, an executive or revenue officer of the Government can be appointed simply as Executive Magistrate to exercise functions under the Code".

29. Section 107 of the Code undoubtedly vests power with the Executive Magistrate to initiate proceedings under the said provision, followed by the passing of a preliminary order under Section 111, and an inquiry under Section 116. If the Magistrate chooses to pass an order directing security to be furnished, a final order to that effect may be made under Section 117. Thus, a proceeding initiated under Section 107 may either end up with a final order under Section 117 or with an order of discharge under Section 118.



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30.It appears that the Law Commission, in its 41st Report, had recommended the vesting of powers in Executive Magistrate for the following reasons (pp 50):

“In order to be effective, proceedings under the section have to be taken urgently, and as they are immediately concerned with maintenance of peace and order, the functions should, in our opinion, be assigned to executive magistrates.”

Thus, what appears to have weighed with the Law Commission as well as Parliament is that proceedings under Section 107 must be carried out with a sense of immediacy. Thus, the initiation, conduct of inquiry and passing of final orders either under Section 117 or discharge under Section 118 was vested with the Executive Magistrate. In fact, when Parliament passed the Amendment Act of 1980 taking away the powers under Section 108 to 110 from Judicial Magistrates and vesting them with Executive Magistrates, the justification given by the Minister of State for Home Affairs, who moved the Amendment bill on the floor of the Lok Sabha was as follows:



“Some of the hon. Members are suffering from a misconception that these are all of a punitive nature. As a matter of fact, they are security proceedings, designed to play a role only in the prevention of crime and especially assisting the maintenance of law and order. It is only a preventive sort of measure. It is not designed to be a punitive nature and as a matter of fact any action taken under these sections can be referred for an appeal to the Sessions Judge.”

It is, therefore, clear that even before Parliament, vesting of jurisdiction with Executive Magistrates under Sections 108 to 110 was on the understanding that it is preventive and not punitive in nature. This is because a final order under Section 117 only involves the taking of security by executing a bond under Sections 107 to 110. In other words, at the Section 117 stage there is no interference to personal liberty as the person concerned is merely required to execute a bond either under Form 12 or Form 13 of the Second Schedule of the Code.



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31. *The punitive element is only in Section 122 which deals with a failure to execute a bond (Section 122(1)(a) and consequences of a breach of a bond executed under Section 107 (Section 122(1)(b). Nevertheless, proceedings under Section 122 are clearly separate and distinct from the proceedings which culminate with the passing of a final order under Section 117.*

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.PC., 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,—

- 1. in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate;*
- 2.*



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(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 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.

34.

A close reading of the aforesaid passages from the decision in Gulam Abbas would show that (i) the power to direct the execution of a bond under Section 107 Cr.P.C is an executive function and (ii) if any one were to commit a breach of any order passed by an Executive Magistrate in exercise of his administrative or executive function, which includes an order under Section 117 directing the execution of a bond under Section 107, he will have to be prosecuted before a Judicial Magistrate to receive punishment. This decision, being a decision of a bench of three judges of the Supreme Court, is clearly binding on us.



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40. It was, however, urged on behalf of the State that the decision of the Supreme Court in *Devadassan v Second Class Executive Magistrate*, (2022 SCC Online SC 280), is an authority for the proposition that an Executive Magistrate can detain a person in exercise of power under Section 122(1) (b). This decision emanated out of an order passed by a learned single judge in the Madurai Bench of this Court in Cr.R.C (MD) 379 of 2021. The order of the learned single judge discloses that the only point raised before the Court was that no opportunity was given to the accused before the bond was forfeited. The Court negatived the contention and dismissed the revision. On appeal, the only point urged before the Supreme Court, as is evident from paragraph 4 of the order, was that the appellant had been jailed without due enquiry and without affording reasonable opportunity. The Supreme Court upheld the order observing that “in the facts of the case at hand, nothing has been brought on record that how and in what manner the procedure contemplated under Chapter VIII has not been followed.” That



apart, more importantly we notice that the decision in Gulam Abbas, which was by a bench of three Hon'ble Judges, was not brought to the notice of the two Hon'ble Judges who decided Devadassan. Under these circumstances, as a measure of judicial discipline we are bound by the dicta of the larger bench of the Supreme Court in Gulam Abbas.

41. In view of the aforesaid discussion, we hold that an Executive Magistrate cannot authorize arrest and detention of a person under Section 122(1)(b) for violation of a bond under Section 107 Cr.P.C. In view of the decision of the Supreme Court in Gulam Abbas, a person violating the bond under Section 107, executed pursuant to an order under Section 117, will have to be challenged or prosecuted before a Judicial Magistrate to receive punishment under Section 122(1)(b)."

6. In view thereof, impugned order cannot be sustained and thus it is liable to be set aside, having said that, liberty is granted to the police officials to proceed in accordance with law, keeping in view the law laid down by Division Bench in the judgment referred supra.



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7. This Criminal Revision Petition is allowed and the impugned order is hereby set aside. Petitioner is directed to be released forthwith, unless he is wanted in some other case. Consequently, connected Miscellaneous Petition is closed.

07.01.2026

LS

Note: Issue Order Copy by 09.01.20206.

To:

1. The Executive Magistrate Cum,
Tahsildar, Avudaiyarkovil Taluk,
Aranthangi,
Pudhukottai District..
2. The Inspector of Police,
Mimisal, Police Station,
Pudhukottai District.
3. The Superintendent,
Central Prison,
Trichy.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High court,
Madurai.



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MOHAMMED SHAFFIQ,J.

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