

Madras High Court

Sudalaikumar vs The Sub Divisional Executive ... on 14 July, 2023

CrL.R.C. (MD) .No

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 14.07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrL.RC(MD)No.733 of 2023

Sudalaikumar

... Petitioner/Pe

Vs.

1.The Sub Divisional Executive Magistrate,
Sub Collector,
Thoothukudi,
Thoothukudi District.

2. The Inspector of Police,
Seithunganallur Police Station,
Thoothukudi District.

... Respondents/Complaina

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w. of Cr.P.C., to call for the records pertaining to the order, dated 05.07.2023 by the 1st respondent in his proceedings in Aa1/107/M.C.No.96 of 2023 and to set aside the same.

For Petitioner : Mr.C. Mayilvahanarajendran
For Respondents : Mr.P. Kottaichamy
Government Advocate (CrL.Side)

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<https://www.mhc.tn.gov.in/judis>

CrL.R.C. (MD)

ORDER

This Criminal Revision is filed to quash the order on the file of the first respondent, dated 05.07.2023 passed in Aa1/107/M.C.No.96 of 2023

2. The impugned order passed by the first respondent wherein, the petitioner was arrested and detained under Section 122(1)(b) of Cr.P.C for the violation of bond condition executed under Section 107 of Cr.P.C dated 02.02.2023 ie., he involved in the offence after executing the bond under Section 107 of Cr.P.C. Aggrieved by the said order, the petitioner has preferred the present revision.

3. The learned counsel appearing for the petitioner would submit the first respondent has no jurisdiction to pass impugned order 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 order.

4. The learned Government Advocate (CrL. Side) submitted that against the <https://www.mhc.tn.gov.in/judis> CrL.R.C.(MD).No.733 of 2023 above said order they are going to file SLP before the Hon'ble Supreme Court.

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

6. The issue in this case is that whether the first respondent has jurisdiction to pass impugned order 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.

(b) Ex-consequenti, the decision in Balamurugan v. State, MANU/TN/2058/2016, will stand overruled.

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(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 :

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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.”

7. In view of the above ratio, this Court is inclined to quash the impugned order passed by the first respondent.

8. In the result, the Criminal Revision is allowed and the impugned order dated 05.07.2023, passed by the The Sub Divisional Executive Magistrate, Sub Collector, Thoothukudi, Thoothukudi District in Aa1/107/M.C.No.96 of 2023, is hereby set aside and therefore, the petitioner is directed to be released forthwith, <https://www.mhc.tn.gov.in/judis> Crl.R.C.(MD).No.733 of 2023 unless his custody is required in connection with any other case.

14.07.2023 NCC : Yes/No Index : Yes/No Internet: Yes/No dss Note : Issue order copy on 17.07.2023 To

1. The Sub Divisional Executive Magistrate, Sub Collector, Thoothukudi, Thoothukudi District.

2. The Inspector of Police, Seithunganallur Police Station, Thoothukudi District.

3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

<https://www.mhc.tn.gov.in/judis> Crl.R.C.(MD).No.733 of 2023 K.K.RAMAKRISHNAN, J.

trp Crl.RC(MD)No.733 of 2023 14.07.2023 <https://www.mhc.tn.gov.in/judis>