



Crl.O.P.(MD)No.16019 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.16019 of 2024

and

Crl.M.P.(MD)No.10100 of 2024

1.Nagaraj

2.Siva @ Paramasivam

3.Suresh

4.Kuppusamy

... Petitioners

Vs.

1.The State of Tamilnadu represented through
The Deputy Superintendent of Police,
Periyakulam Sub Division,

2.The Inspector of Police,
Jeyamangalam Police Station,
Crime No.29 of 2018

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records in pertaining to the order in Cr.M.P.No.126 of 2024 in Spl.S.C.No.119 of 2020 on the file of Special Court for Trial of Cases under SC/ST (POA) Act, Theni dated 07.06.2024 and set aside the



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same and allow the petitioner to cross examine the P.W.1 and P.W.2 and further cross examination of P.W.3.

For Petitioners : Mr.S.Balaji

For Respondents : Mr.P.Kottai Chamy
Government Advocate (Crl. Side)

ORDER

The Criminal Original Petition is directed against the order dated 07.06.2024 passed in Cr.M.P.No.126 of 2024 in Spl.S.C.No.119 of 2020 on the file of the Special Court for Trial of Cases under SC/ST (POA) Act, Theni, dismissing the petition filed under Section 311 Cr.P.C.

2. The petitioners are facing the case in Spl.S.C.No.119 of 2020 for the alleged offences under Sections 341, 294(b), 323 and 324 IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Act.

3. It is not in dispute that when the case was pending for defence evidence, the above petition came to be filed to recall P.W.1 and P.W.2 for cross-examination and P.W.3 for further cross-examination.



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4. The main contention of the petitioners is that when P.W.1 and P.W.2 were examined in chief, the earlier counsel on record was not well and hence, they were not cross-examined.

5. It is evident from the records that P.W.1 and P.W.2 were examined in chief on 04.12.2020.

6. The only reason canvassed by the petitioners is that the present counsel on record has filed change of vakalat recently and the previous counsel at the time of chief examination of P.W.1 and P.W.2 was not well.

7. As rightly observed by the learned trial Judge, the reason canvassed, by no stretch of imagination, can be taken as sufficient ground to allow the petition. But the fact remains that P.W.1 and P.W.2 were not at all cross-examined.

8. At this juncture, the learned counsel appearing for the petitioner would submit that they are restricting their prayer with regard to P.W.1



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and P.W.2.

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9. Considering the facts and circumstances of the case and also the fact that the witnesses sought to be recalled were not at all cross examined and also taking note of the fact that the petitioners are facing trial for the offences under Sections 341, 294(b), 323 and 324 IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Act, this Court is of the clear view that the petitioners should be given one more opportunity to cross-examine the P.W.1 and P.W.2. But at the same time, this Court is of the further view that the petitioners must be mulcted with costs.

10. In the result, the Criminal Original Petition is allowed and the impugned order, dated 07.06.2024 in Cr.M.P.No.126 of 2024 in Spl.S.C.No.119 of 2020 on the file of the Special Court for Trial of Cases under SC/ST (POA) Act, Theni, is set aside and the petition to recall the witnesses with regard to P.W.1 and P.W.2 only is allowed on payment of cost of **Rs.10,000/- (Rupees Ten Thousand Only)** by the petitioners to the credit of the High Court Legal Service Authority attached to this Bench and on payment of process fee and batta to the said witnesses and



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on further condition that the petitioners side should cross examine the witnesses whenever the witnesses are produced before the Court and in case of the petitioners' failure to cross examine the particular witnesses, then they will forfeit their rights to cross examine the witnesses. The trial Court is directed to summon the said witnesses for the purpose of cross examination and complete the examination of the said witnesses within a period of ten days from today (24.09.2024). Consequently, connected Miscellaneous Petition is closed.

24.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
csm

Note : Issue order copy on 25.09.2024

To

- 1.The Sessions Judge,
Special Court for Trial of Cases under SC/ST (POA) Act, Theni.
- 2.The Deputy Superintendent of Police,
Periyakulam Sub Division,
- 3.The Inspector of Police,
Jeyamangalam Police Station,
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
Crl.O.P.(MD)No.16019 of 2024
and
Crl.M.P.(MD)No.10100 of 2024

Dated: 24.09.2024