



Crl.O.P.No.1019 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.1019 of 2025 and

Crl.M.P.No.526 of 2025

1. Degaleesan

2. Rajagopal

3. Dhamodharan

... Petitioners

Vs.

State Rep. by

Station House Officer

Thirukoilur Police Station

Thirukoilur, Kallakurichi District

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to call for the records relating to the order dated 21.09.2024 made in C.M.P.No.3705 of 2024 in C.C.No.54 of 2019 on the file of The Court of Judicial Magistrate, Thirukoilur, to set aside the same and allow the CMP.

For Petitioners

: Mr.K.Gangadaran

For Respondent

: Mr.S.Vinoth Kumar

Government Advocate (Crl. Side)



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ORDER

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This Criminal Original Petition has been filed by the petitioners challenging the order dated 21.09.2024 made in C.M.P.No.3705 of 2024 in C.C.No.54 of 2019 on the file of the Judicial Magistrate, Thirukoilur, and set aside the same.

2. The case of the petitioners is that the petitioners have been arrayed as A1 to A3 in C.C.No.54 of 2019 on the file of the Judicial Magistrate, Thirukoilur for the alleged offences under Sections 294(b), 323, 506(1) and 325 of IPC. During trial, one of the witnesses namely P.W.9, a retired Sub Inspector of Police was examined in chief on 25.07.2024, however, due to absence of the senior counsel, P.W.9 was cross examined by the Junior counsel with some formal questions only. Subsequently, in the month of September 2024, the petitioners filed a petition under Section 311 Cr.P.C. before the trial Court to recall the prosecution witness P.W.9 in order to elicit the contradictions stated by the prosecution witnesses, whereas the trial Court



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dismissed same without assigning proper reasons. Aggrieved by the same, the petitioners have filed the present petition.

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3. Heard both sides and perused the materials available on record.

4. The contention of the petitioners is that due to absence of the Senior Counsel and non availability of certain materials, they could not cross examine the witness fully on the date of examination.

5. Once trial is started, it has to be conducted on a day to day basis. In case of any inconvenience, the defense counsel has to make alternate arrangements to cross examine the witness and adjournment should not be sought on the ground of non availability of counsel.

6. Even in the impugned order, the trial Court has referred to the decisions of the Hon'ble Supreme Court as follows wherein, the Hon'ble Supreme Court has held that if the examination-in-chief is over, the cross-examination should be completed on the same day.



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*9. Needless to state that in criminal trial, the chief and cross-examination of witnesses are to be held in the same day. In **Vinod Kumar Vs. State of Punjab 2015 (3) SCC 220** the Hon'ble Supreme Court of India held that it is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day.*

7. Therefore, the reason stated by the learned counsel for petitioners is not acceptable. However, since the accused is entitled to get a fair trial and due to fault on the part of the counsel, the accused should not be deprived of fair opportunity for fair trial, the order passed by the trial Court in C.M.P.No.3705 of 2024 in C.C.No.54 of 2019 is set aside.

8. The trial Court is directed to give one more opportunity to the petitioners on payment of cost of Rs.10,000/-.

9. The petitioners are directed to deposit the said amount of Rs.10,000/- (Rupees Ten Thousand Only) before the trial Court to the credit of C.C.No.54

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of 2019 on or before 27.01.2025. On receipt of the same, the trial Court is

directed to send summon to P.W.9 for cross examination. The counsel for the petitioners is directed to cross examine the witness on the same day of his appearance failing which, the petitioners will loss their right of cross examination.

10. With the above directions, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

21.01.2025

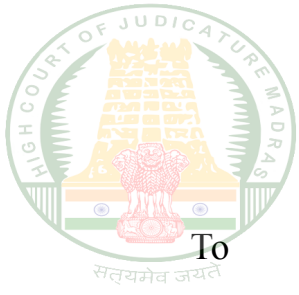
Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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Note: Issue order copy on 22.01.2025.



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To

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1. The Judicial Magistrate,
Thirukoilur
2. The Station House Officer
Thirukoilur Police Station
Thirukoilur, Kallakurichi District
3. The Public Prosecutor
High Court of Madras



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P.VELMURUGAN. J.

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