



Crl.O.P.No.3521 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.3521 of 2025
and Crl.M.P.No.2306 of 2025

K.Raja

... Petitioner

Vs

The State By,
The Inspector of Police,
Gudiyattam Town Police Station,
Vellore District.

Cr.No.24 of 2019.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to direct the Principal Sessions Judge, Vellore to eschew the portion of the evidence of PW2 as Cross Examination of A2 done by the petitioner in SC No.14 of 2020 to secure the ends of justice.

For Petitioner : Mr.S.Sathia Chandran

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl.side)

ORDER

This petition has been filed for direction directing the Principal Sessions Judge, Vellore to eschew the portion of the evidence of PW2 as Cross Examination of A2 done by the petitioner in SC No.14 of 2020.

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



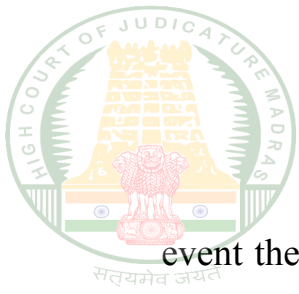
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3. The petitioner is arrayed as A2 in S.C.No.14 of 2020, on the file of the Principal Sessions Judge, Vellore for the offences under Sections 294(b), 506(2) and 302 IPC. At the time of examining PW2, the learned counsel for the petitioner did not appear for cross examination and the petitioner, who is being the second accused, wanted to cross examine PW2 by himself. The Trial Court permitted to cross examine and accordingly, he had cross examined him. Now, the petitioner filed this petition to eschew the portion of the evidence of PW2, on the ground that he was compelled to cross examine PW2.

4. The learned counsel for the petitioner would submit that serious prejudice will be caused if the cross examination of PW2 by the petitioner is not eschewed, since the petitioner was compelled to cross examine PW2. He also submitted that in a very same circumstances while examining PW1, the petitioner stated that he did not know to cross examine.

5. In support of his contention he relied upon the Judgment of the Hon'ble Supreme Court of India in SLP (Criminal) diary No.48856 of 2024. By an order dated 08.11.2024, the Hon'ble Supreme Court of India held that in an



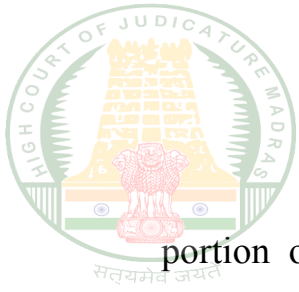
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event the witnesses are present and the defence counsel unnecessarily seeks an adjournment, the Trial Judge should appoint an amicus and direct the cross examination to proceed.

6. The above judgment is not applicable for the simple reason that when the accused himself warranted to cross examine the witness, no question of appointment of amicus arises. That apart, the petitioner had already engaged a counsel to represent on his behalf before the Trial Court. On the day of cross examination, the petitioner's counsel was absent before the Trial Court and as such, he himself cross examined PW2. Therefore, there is absolutely no bar under Criminal Procedure Code or BNSS, 2023 to cross examine the witness by the accused.

7. A perusal of records revealed that there is absolutely no record to show that the petitioner was compelled to cross examine PW2 by himself. In fact, after cross examination of PW2, he had filed a petition under Section 311 of Cr.P.C for further cross examination of PW2. Now, the matter is posted for cross examination of PW2.

8. In view of the above, this Court finds no grounds to eschew the



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portion of the evidence of PW2 as Cross Examination of A2 done by the
petitioner in SC No.14 of 2020.

9. Accordingly, this Criminal Original petition is dismissed.

Consequently, connected Miscellaneous petition is closed.

10.02.2025

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

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To

1. The Principal Sessions Judge, Vellore.
2. The Inspector of Police,
Gudiyattam Town Police Station,
Vellore District.
3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J.

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