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CRL OP No. 22937 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-08-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRL OP No. 22937 of 2025

1. Balakrishnan

S/o. Chellappa Gounder, 2/264,
Kannarpalayam, Kaaramadaï post,
Coimbatore District.

Petitioner(s)

Vs

1. The State Rep by, The Inspector of
Police,
M-1, Periyanaicken Palayam Police
Station, Coimbatore District.

Respondent(s)

PRAYER : Criminal Original Petition filed under section 528 of BNSS to call for the records pertaining to the order dated 14.02.2025 in Cr.MP.No.1202/2025 in CC.No.1631/2019 on the file of Ld. Judicial magistrate No.V, Coimbatore and set aside the same so far as dismissal in respect of PW-1 to PW-3 is concerned by allowing this Criminal Original petition .

For Petitioner(s): N.Ponraj
 E.Shobana



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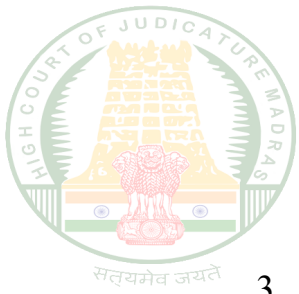


For Respondent(s): Mr.K.M.D.Muhilan,
Additional Public Prosecutor

ORDER

Challenge has been made against the Order of dismissal of the petition filed by the petitioner to recall P.W.1 to P.W.3 and to set aside the order dated 14.02.2025 in Cr.MP.No.1202/2025 in CC.No.1631/2019 on the file of learned Judicial Magistrate No.V, Coimbatore by allowing this Criminal Original petition .

2. The petitioner is facing trial in C.C.No.1631 of 2019 on the file of the learned Judicial Magistrate No.V, Coimbatore for the offences under sections 279 and 304[A] of IPC. It is the case of the petitioner that on the date of examination of P.W.1 to P.W.3, as the petitioner's counsel was not present, the witnesses have not been cross examined. Therefore, the petitioner had filed a petition to recall P.W.1 to P.W.3 and the said petition has been dismissed by the trial Court. Challenging the same the present Criminal Original Petition has been filed.



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3. It is relevant to note that P.W.1 to P.W.3 have been chief examined on 26.09.2022. However, the counsel has not cross examined the witnesses. Thereafter, a petition has been filed to recall P.W.1 to P.W.3 for the cross examination. The said petition has been allowed. But on the date when the witnesses were present, they were not cross examined by the counsel for the petitioner. Thereafter, the petitioner filed another petition for recalling P.W.1 to P.W.3 and the said petition has been dismissed by the trial Court. The very conduct of the advocate, in not cross examining the witnesses when they were present, is deprecated. It is also relevant to note that the trial Court has allowed the petition to recall the witnesses for cross examination. But the fact remains that batta has not been paid. This itself shows the lethargic attitude of the defence counsel. In view of this Court, when a lawyer is engaged in a criminal case, it is the duty of the lawyer to cross examine the witness, and allowing the witnesses unfronted is totally against professional ethics. However, taking note of the fact that merely because of the conduct of the lawyers, the right of the accused to cross examine the witnesses cannot be taken away. Hence, in



order to give an opportunity to the petitioner to cross examine P.W.1 to P.W.3, I am inclined to allow this petition on payment of cost.

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4. Accordingly, this Criminal Original Petition is allowed on payment of cost of Rs.2000/- [Rupees two thousand only] each, payable by the petitioner, to P.W.1 to P.W.3 on the date of their cross examination. [Totally Rs.6000/- [Rupees six thousand only]. Let the trial Court fix a date for cross examination of P.W.1 to P.W.3 and the petitioner shall complete the cross examination of the witnesses on the date fixed by the trial Court. If the cross examination has not been done on that date, his right for cross examination of the witnesses shall be forfeited.

20-08-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

vrc



To
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1. The Judicial Magistrate No.V,
Coimbatore.

1. The Inspector of Police,
M-1, Periyanaicken Palayam Police
Station, Coimbatore District.



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N.SATHISH KUMAR J.

VRC

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