



Crl.O.P.No.17545 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2025

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.17545 of 2025

D.Sivakumar

... Petitioner

Vs

1. Mariya Pelics @ Mathiyalagan

2. Arun Kumar

3. The State represented by,
The Inspector of Police,
T12 Poonamallee Police Station,
Coimbatore.

... Respondents

PRAYER: Criminal Original Petition filed under Section 528 of BNSS 2023, to call for the records pertaining to the order dated 16.4.2025 passed by the learned Judicial Magistrate No.II, Poonamallee in Crl.M.P.No.488 of 2025 in C.C.No.3 of 2018 and to set aside the same.

For Petitioner : Mr.R.Prabakar

For R3 : Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)



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ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the order dated 16.4.2025 passed by the learned Judicial Magistrate No.II, Poonamallee in Crl.M.P.No.488 of 2025 in C.C.No.3 of 2018 and set aside the same.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the third respondent-Police and perused the materials available on record.

3. Learned counsel for the petitioner submitted that already sufficient opportunity was given to the accused to cross-examine all the witnesses, however, in order to protract the case, they have purposefully avoided to cross examine them and subsequently, they have filed the petition for recall by invoking Section 348 of BNSS. The learned Magistrate, on 16.4.2025 passed the following order:

“ Petition allowed, give Rs.300/-to each witness.”



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Aggrieved by the said order, the petitioner who is the *de-facto* complainant in the case, has filed the present criminal original petition.

4. It is seen from the records that though nine witnesses viz., (P.W.1 to P.W.9) were examined, they have been partly cross examined. Since the defence counsel was not able to complete the cross examination, the respondents 1 and 2 herein filed a petition under Section 348 of BNSS to recall P.W.1 to P.W.7 and the reasons stated in the petition was that the defence counsel could not appear on that day when the witnesses were present for further cross-examination.

5. It is apposite to note that unfortunately, the judicial delivery system has been adversely affected by certain legal practitioners who , without adequately understanding the case themselves, mislead the litigant public. Due to non-cooperation /default on the part of the counsel, litigant should not be made to suffer.



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6. The petitioner herein who is the de-facto complainant has no role in filing a petition to challenge the order passed by the Court and at the best, the *de-facto* complainant can assist the prosecution and he cannot conduct a parallel trial/proceedings.

7. On a perusal of the records, it is seen that the witnesses have already been cross examined. However, the defence counsel did not complete the cross-examination. In order to give opportunity to the parties, the learned Magistrate is directed to summon the witnesses for further cross-examination. On issuance of summons and on appearance of the witnesses, the defence counsel is directed to cross-examine them on the same day. Failing which, the private respondents/accused will lose their right to cross examine.

8. The learned Judicial Magistrate No.II, Poonamallee is directed to give one more opportunity to the defence counsel for cross-examination of the witnesses. Since the case is pending from 2018, the learned Magistrate is directed to dispose of the case as early as possible,



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preferably, within a period of two months from the date of receipt of a copy of this order and file a report before this Court.

9. With the abovesaid direction, this Criminal Original Petition is disposed of.

18.06.2025

mfa

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The Judicial Magistrate No.II, Poonamallee.
- 2.The Inspector of Police,
T12, Poonamallee Police Station,
Coimbatore.
3. The Public Prosecutor,
High Court, Chennai.



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P.VELMURUGAN, J

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