



Crl.O.P.No.17238 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.17238 of 2025 and
Crl.M.P.No.10843 of 2025

Vinayagam

... Petitioner

Vs.

The State Rep. by
Inspector of Police
All Women Police Station
Gudiyatham
Vellore District

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of BNSS, 2023 to set aside the order dated 09.05.2025 passed by learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Court) Vellore in Crl. M.P.No.119/2025 in S.C.No.128 of 2018 by dismissing the Section 311 Cr.P.C. petition filed by petitioner.

For Petitioner	: Mr.D.Rajagopal
For Respondent	: Mr.S.Vinoth Kumar
	Government Advocate (Crl. Side)



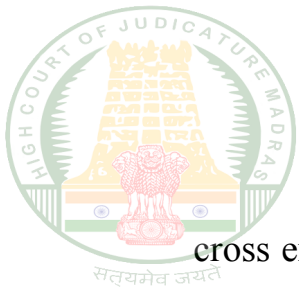
CrI.O.P.No.17238 of 2025

ORDER

WEB COPY

This Criminal Original Petition has been filed by the petitioner to set aside the order dated 09.05.2025 passed by learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Court) Vellore in CrI.M.P.No.119/2025 in S.C.No.128 of 2018 by dismissing the Section 311 Cr.P.C. petition filed by the petitioner.

2. The case of the petitioner is that based on the complaint lodged by the mother of the victim, the respondent police registered a case in Crime No.4 of 2015 against the petitioner for the offence under Sections 376, 511 and 506(1) IPC alleging that the petitioner committed the offence of rape on her daughter. After investigation, the respondent police filed the charge sheet and the same was taken on file in S.C.No.128 of 2018 on the file of the Sessions Judge, Magalir Neethi Mandram, (Fast Track Court) Vellore. The grievance of the petitioner is that, the petitioner had engaged a counsel to defend his case. During the chief examination of P.W.1 to P.W.8, the defense counsel could not



CrI.O.P.No.17238 of 2025

cross examine the said witnesses due to his ill health. Therefore, the petitioner

filed a petition under Section 311 Cr.P.C. in CrI.M.P.No.118/2024 seeking to

recall all the prosecution witnesses viz., P.W.1 to P.W.8 for cross examination.

But the learned Magistrate, dismissed the said petition by order dated

09.05.2025. Hence, challenging the same, the present petition is filed.

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

4. It is seen that P.W.1 and P.W.2 were examined in chief way back in the year 2021 i.e. on 28.10.2021 itself. P.W.3 was examined in chief on

15.09.2022. P.W.4 was examined in chief on 19.07.2023. P.W.5 and P.W.6 were examined in chief on 27.09.2023. P.W.7 was examined in chief on 16.10.2023.

P.W.8 was examined in chief on 27.10.2023 and the prosecution closed the evidence on 27.10.2023. The witnesses had been examined from the year 2021

to 2023 and till the completion of examination of all the prosecution witnesses, the petitioner had not taken any steps to cross examine the said witnesses.

Thereafter, he has filed a petition under Section 311 Cr.P.C. to recall the said



CrI.O.P.No.17238 of 2025

witnesses on the ground that the defence counsel was not well which cannot be

accepted. The petitioner has purposefully not cross examined any of the witnesses and in order to protract the case, he has watched the examination of the prosecution witnesses as a mute spectator for three years and after the completion of prosecution side witnesses, he has filed a petition to recall which is nothing but abuse of process of law. Therefore, the trial Court has rightly dismissed the petition. However, in order to give one more opportunity to the petitioner/accused, this Court is inclined to set aside the impugned order.

5. Accordingly, the order passed by the learned Sessions dated 09.05.2025 in CrI.M.P.No.119/2025 is set aside.

6. The petitioner is directed to deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) before the trial Court on or before 23.06.2025 towards cost to the witnesses.

7. On such deposit, the learned Sessions Judge is directed to issue summons to the witnesses for appearance for the purpose of cross examination



CrI.O.P.No.17238 of 2025

on 30.06.2025 and 01.07.2025 (i.e. each day four witnesses have to be cross

WEB COPY

examined). The petitioner is directed to cross examine all the witnesses on the same day of their appearance failing which, he would loose his right of cross examination.

8. Further, the learned Sessions Judge is directed to disburse the said cost of Rs.25,000/- to the witnesses equally.

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

16.06.2025

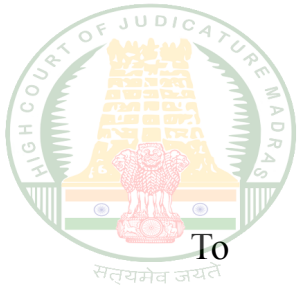
Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

ksa-2

Note: Issue order copy on 18.06.2025.



CrI.O.P.No.17238 of 2025

To

WEB COPY

1. The Sessions Judge,
Magalir Neethi Mandram, (Fast Track Court)
Vellore
2. The Inspector of Police
All Women Police Station
Gudiyatham
Vellore District
3. The Public Prosecutor
High Court of Madras, Chennai



WEB COPY



CrI.O.P.No.17238 of 2025

P.VELMURUGAN. J.

Ksa-2

CrI.O.P.No.17238 of 2025

16.06.2025