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Crl.O.P.No.18703 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2025

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.18703 of 2025

and

Crl.M.P.No.12461 of 2025

Kotteeshwaran

... Petitioner

Vs.

The State Rep by,
Sub Inspector of Police,
Dusi Police Station,
Crime No.160/2010.

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 BNSS, 2023, to set aside the dismissal order passed by Judicial Magistrate, Cheyyar, Tiruvannamalai District on 07.04.2025 in Crl.M.P.No.1219 of 2025 in C.C.No.361 of 2012 and allow the petition accordingly.

For Petitioner : Mr.E.Lakshmipathy

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



CrI.O.P.No.18703 of 2025

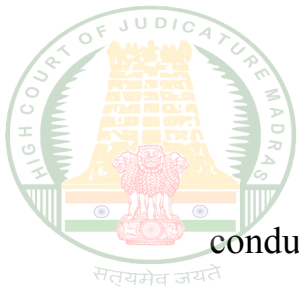
ORDER

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The Criminal Original Petition is filed as against the order passed by the Judicial Magistrate, Cheyyar, Tiruvannamalai District on 07.04.2025 in CrI.M.P.No.1219 of 2025 in C.C.No.361 of 2012.

2. It is seen that the petitioner/A2 is facing trial in C.C.No.361 of 2012 for the offences under Sections 294(b) and 326 IPC before the Judicial Magistrate, Cheyyar, Tiruvannamalai. Since the co-accused A1 died, the charges against A1 stood abated. Now the petitioner is the sole accused. On the side of the prosecution, totally 5 witnesses were examined in chief and they were not cross examined by the petitioner on the date of their chief examination and hence their evidence was closed on 18.03.2025. The petitioner filed the petition in CrI.M.P.No.1219 of 2025 to re-call P.W.1 to P.W.3 and P.W.5 for cross examination. The trial Court considered the petition and dismissed it assigning reasons on 07.04.2025. Assailing the said order, the present petition is filed by A2 invoking Section 538 of the BNSS, 2023.

3. Learned counsel for the petitioner submitted that the counsel, who was engaged earlier in the Court below, did not co-operate for



CrI.O.P.No.18703 of 2025

conducting trial and also cross examined the witnesses and that the prosecution side evidence was closed. Therefore, the petitioner filed the petition invoking Section 311 Cr.P.C., to re-call P.W.1 to P.W.3 and P.W.5 for cross examination. However, the learned trial Judge dismissed the petition on the ground that the trial is pending for more than 10 years and only to drag on the proceedings the petitioner has filed the petition, which is against the interest of natural justice. Learned counsel further submitted that the petitioner/A2 never dragged on the proceedings of the above case at any point of time and he is an innocent person and he should not be punished for the fault committed by his counsel.

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

5. On a reading of the records, it is seen that the witnesses P.W.1 to P.W.3 and P.W.5 were not cross-examined on the date of their chief-examination, since the previous counsel who was engaged by the petitioner/A2 before the Court below, failed to cross-examine those witnesses on the date of their chief-examination and that the evidence on their side was closed. Because of the mistake committed by the counsel for the petitioner, the petitioner should not suffer.

6. Considering the facts and circumstances and also in the interest



Crl.O.P.No.18703 of 2025

of justice, the petitioner herein can be given one more opportunity to cross examine the witnesses i.e., P.W.1 to P.W.3 and P.W.5. This Court is inclined to accordingly allow the present petition. Accordingly, the Criminal Original Petition is allowed. The order dated 07.04.2025 passed in Crl.M.P.No.1219 of 2025 is hereby set aside. Consequently, connected miscellaneous petition is closed.

7. The learned Judicial Magistrate, Cheyyar, Tiruvannamalai District, is directed to issue summons to the witnesses and re-call the witnesses viz., P.W.1 to P.W.3 and P.W.5 for cross examination and the petitioner is also directed to complete the cross examination of those witnesses on the date of their appearance before the Court below without fail.

03.07.2025

Index : Yes/No
Neutral Citation Case : Yes/No
Speaking Order : Yes/No
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CrI.O.P.No.18703 of 2025

To

1. The Judicial Magistrate,
Cheyyar, Tiruvannamalai District.
2. The Sub Inspector of Police,
Dusi Police Station,
Cheyyar.
3. The Public Prosecutor,
High Court, Madras.



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CrI.O.P.No.18703 of 2025

P.VELMURUGAN, J

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CrI.O.P.No.18703 of 2025

03.07.2025
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