



Crl.O.P.No.18704 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.18704 of 2025

and

Crl.M.P.No.12469 of 2025

Kotti @ 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 19.10.2024 in Crl.M.P.No.6103 of 2024 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)



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ORDER

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The Criminal Original Petition is filed as against the order dated 23.10.2024 passed by the Judicial Magistrate, Cheyyar, Tiruvannamalai District in Crl.M.P.No.6103 of 2024 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. The petitioner filed the petition in Crl.M.P.No.6103 of 2024 to re-call P.W.4 for cross examination, as P.W.4 was examined in chief on 27.09.2024 and was not cross examined by the petitioner on that day. The trial Court considered the petition and dismissed it assigning reasons on 23.10.2024. 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,



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who was engaged earlier in the Court below, did not co-operate for 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.4 for cross examination. However, the learned trial Judge dismissed the petition on the ground that P.W.4 is holding an important position and recalling such witness will affect the public work and more over, it would not prejudice the accused. 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 witness P.W.4 was not cross-examined on the date of her chief-examination, since the previous counsel who was engaged by the petitioner before the Court below, failed to cross-examine P.W.4 on the date of her chief-examination and that the evidence on her side was closed. Because of the



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mistake committed by the counsel for the petitioner, the petitioner should not suffer.

6. Considering the facts and circumstances and also in the interest of justice, the petitioner herein can be given one more opportunity to cross examine the witness i.e., P.W.4. This Court is inclined to accordingly allow the present petition. Accordingly, the Criminal Original Petition is allowed. The order dated 23.10.2024 passed in CrI.M.P.No.6103 of 2024 is hereby set aside. Consequently, connected miscellaneous petition is closed.

7. The learned Judicial Magistrate, Cheyyar, Tiruvannamalai District, is hereby directed to issue summons to the witness and recall the witness viz., P.W.4 for cross examination and the petitioner is also directed to complete the cross examination of P.W.4 on the date of her 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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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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P.VELMURUGAN, J

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