



CrI.O.P.No.29740 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.O.P.No.29740 of 2024

and

CrI.M.P.No.16666 of 2024

Kesavan

... Petitioner

Vs.

1. The State Rep.by
The Inspector of Police,
Poraiyar Police Station,
Mayiladuthurai District,
Crime No.101 of 2024.

2. Manickavel

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C./ 528 BNSS 2023, to call for the records pertaining to S.C.No.138 of 2024 on the file of the learned District and Sessions Judge, Mayiladuthurai and set aside all the proceedings of trial till date. Consequently, direct for a denovo trial in S.C.No.138 of 2024 on the file of the learned District and Sessions Judge, Mayiladuthurai.

For Petitioner : Mr.U.Kathiravan
For Respondents : Mr.S.Sugendran
Additional Public Prosecutor
for R1
No appearance for R2



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ORDER

This Criminal Original Petition has been filed to set aside all the proceedings of trial in S.C.No.138 of 2024 on the file of the learned District and Sessions Judge, Mayiladuthurai and consequently give a direction for *de novo* trial in S.C.No.138 of 2024 on the file of the learned District and Sessions Judge, Mayiladuthurai.

2. The case of the prosecution is that on 07.04.2024, the petitioner who was under the influence of alcohol, allegedly attacked his wife Mahalakshmi, due to which, she sustained severe injuries and later succumbed to injuries. On the complaint given by the victim's brother, a case in Crime No.101 of 2024 was registered against the petitioner for the offences under Sections 324 and 302 IPC and he was arrested and remanded to judicial custody.

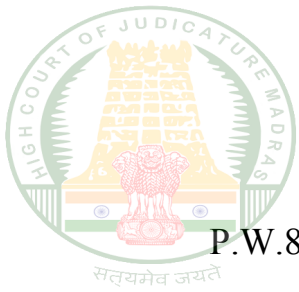
3. Learned counsel for the petitioner would submit that on completion of investigation, the respondent-Police filed a charge-sheet before the learned Judicial Magistrate, Tharangambadi in P.R.C.No.06 of 2024. At the time of committal proceedings, the petitioner pleaded not



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guilty and requested for appointment of a legal aid counsel. On 30.07.2024, the case was transferred to the Principal District and Sessions Court, Mayiladuthurai for trial, where, the petitioner has made a request for appointment of legal aid counsel, due to his financial capacity. However, no legal aid counsel was appointed till 10.09.2024, but the learned trial Judge, framed charges against the petitioner. Later on 11.09.2024, the legal aid counsel was appointed, however, the counsel did not receive a copy of the charge sheet or other related documents, hampering his ability to prepare a defence. He further submitted that failure to appoint a legal aid counsel at the time of framing charges has curtailed petitioner's right to file a discharge petition under Section 227 Cr.P.C., and hence, the petitioner was deprived of an opportunity to challenge the charges before commencement of trial. He further submitted that at the time of examination of prosecution witnesses, the legal aid counsel raised his objection and filed a memo for furnishing of required documents. However, the trial Court without affording adequate time for preparing effective defence, completed the chief examination of P.W.1 to P.W.8. Hence, the present petition has been filed to set aside the charges framed, to eschew the chief examination of witnesses P.W.1 to



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P.W.8 and also seeking *de novo* trial.

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4. Learned Additional Public Prosecutor appearing for the first respondent-Police submitted that charges framed against the petitioner is serious in nature, already trial has commenced and out of 10 witnesses, 8 witnesses have been examined in chief and only two witnesses are remain to be examined. Hence, learned Additional Public Prosecutor prays for dismissal of the present petition.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent and perused the materials available on record.

6. The main contention of the learned counsel for the petitioner is that since the legal aid counsel was not appointed by the authority in time, the petitioner had lost his right to file a discharge petition and also failure to furnish the relevant documents to the appointed legal aid counsel has hampered his right to defend the case.



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7. It is settled law that filing of discharge petition is not a matter of right for the petitioner. There is no bar for the prosecution to proceed further. In the case on hand, already trial has commenced and most of the witnesses have been examined. Therefore, this Court does not find any reason to grant the relief as sought for the by the petitioner by invoking Section 528 BNSS Act. It is open to the petitioner to take all his defence before the trial Court in S.C.No.138 of 2024.

Accordingly, this Criminal Original Petition is dismissed.
Consequently, connected miscellaneous petition is closed.

09.01.2025

Index : Yes/No
Neutral Citation Case : Yes/No
Speaking Order : Yes/No
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To

1. The District and Sessions Judge,
Mayiladuthurai.
2. The Inspector of Police,
Poraiyar Police Station,
Mayiladuthurai District.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J

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