

CrI.O.P.No.25983 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2025

CORAM:

THE HON'BLE MR.JUSTICE N. SATHISH KUMAR

CrI.O.P.No.25983 of 2025

Gunasekar K

... Petitioner

Vs.

State represented by,
The Inspector of Police,
Kadampur Police Station,
Erode District.
(Crime No.40 of 2017)

... Respondent

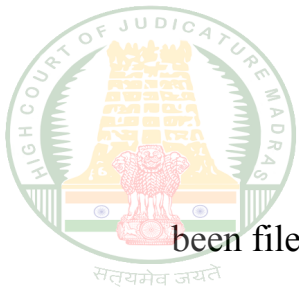
PRAYER : Criminal Original Petition is filed under Section 482 Cr.P.C./528 of BNSS, to set aside the order dated 29.07.2025 passed in CrI.M.P.No.1369 of 2025 by the learned Judicial Magistrate No.I, Gobichettipalayam, Erode District in C.C.No.127 of 2017.

For Petitioner : Mr.R.Thamarai Selvan

For Respondent : Mr.R.Vinothraja
Government Advocate (Criminal Side)

ORDER

Challenging the order of the trial Court dated 29.07.2025, dismissing the petition filed by the petitioner in CrI.M.P.No.1369 of 2025 in C.C.No.127 of 2017, under Section 311 Cr.P.C to recall PW1 & PW2 for the purpose of cross examination, the present Criminal Original Petition has



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been filed.

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2. The petitioner is an accused in Crime No.40 of 2017, registered for the offences punishable under Sections 279 and 304(a) of IPC. The case is now pending trial before the Judicial Magistrate No.I, Gobichettipalayam, Erode, in C.C.No.127 of 2017. In the said proceedings, the petitioner filed a petition in Crl.M.P.No.1369 of 2025 seeking to recall PW1 & PW2 for cross examination. The trial Court dismissed the petition vide order dated 29.07.2025 holding that the petitioner has not stated any specific reason for cross examining the said witnesses. Hence, the present petition has been filed.

3. It is the contention of the learned counsel for the petitioner that the witnesses PW1 and PW2 was examined in chief on 09.06.2023 and due to the negligence of the then counsel, they were not cross examined on the same day. The examination of PW1 and PW2 is vital for the just decision of the case and it is necessary to cross examine them. Hence, he prayed that the petitioner may be permitted to cross examine PW1 & PW2.

4. Heard the learned counsel appearing for the petitioner, the



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learned Government Advocate (Criminal Side) and perused the materials available on record.

5. On perusal of the records, this Court finds that PW1 and PW2 were examined on 09.06.2023, but the defence counsel failed to cross examine them, which clearly indicates slackness on the part of the defence. Though the examination in chief was conducted on 09.06.2023, no application for cross examination has been filed till date. This shows that the counsel appeared on behalf of the accused had treated the trial very lightly, as though he was appearing in an exhibition rather than a court of law.

6. In view of the above, this Court is of the opinion that when an Advocate is engaged in a case, it is the duty of that Advocate to safeguard the interest of their client. The counsel cannot approach the trial casually and allow witnesses to be examined without cross examination. Such conduct of the advocates, in the view of this Court, is clearly against professional ethics, amounts to clear recklessness and invites disciplinary proceedings. When a counsel is engaged to protect the interest of the accused, it is his duty to cross examine the witnesses. Casually allowing the



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witnesses to be examined without cross examination, thereby, neglecting the interest of the accused, is clearly unprofessional.

7. In this case, taking note of the above facts and circumstances of the case that the accused has not been given an opportunity to cross examine PW1 and PW2, this Court is inclined to grant one more opportunity to the petitioner to cross examine PW1 & PW2, subject to payment of cost.

8. Accordingly, this Criminal Original Petition is allowed and the order passed by the learned Judicial Magistrate No.I, Gobichettipalayam, Erode, in Crl.M.P.No.1369 of 2025 in C.C.No.127 of 2017, dated 29.07.2025, is set aside. The petitioner is directed to deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) before the trial Court. On such deposit, the trial Court shall recall PW1 & PW2 and fix a date for their cross examination. It is made clear that the petitioner shall cross examine the said witnesses on the very same day of their appearance and in the event of the petitioner failing to cross examine the witnesses, the right of the petitioner to cross examine them shall be forfeited.

9. The trial Court shall disburse a sum of Rs.5,000/- to each of the



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witnesses, namely PW1 & PW2, on the date of their appearance.

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Neutral Citation: Yes/No

To

1. The Judicial Magistrate No.I, Gobichettipalayam,
Erode District.
2. The Inspector of Police,
Kadampur Police Station,
Erode District.
3. The Public Prosecutor,
High Court of Madras.



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N. SATHISH KUMAR, J.

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