



CrI.O.P.No.27518 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2025

CORAM:

THE HON'BLE MR.JUSTICE N. SATHISH KUMAR

CrI.O.P.No.27518 of 2025
and CrI.MP.No.18581 of 2025

K.Sivaraj

... Petitioner

Vs.

The State Rep.by
Inspector of Police,
Thammampatti Police Station,
Salem District,
Cr.No.262 of 2023

... Respondent

PRAYER : Criminal Original Petition is filed under 528 of BNSS, to set aside the order dated 03.09.2025 passed in C.M.P.No.687 of 2025 in C.C.No.162 of 2024 on the file of Judicial Magistrate-II, Attur and permit the petitioner to cross-examine the Pws in C.C.No.162 of 2024.

For Petitioner : Mr.A.Rajakumar

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

ORDER

Challenging the order of the trial Court dated 03.09.2025, dismissing the petition filed by the petitioner in CMP.No.687 of 2025 in C.C.No.162 of 2024, under Section 311 Cr.P.C to recall P.W.1 to P.W.5, P.W.7 and P.W.9



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for the purpose of cross examination, the present Criminal Original Petition
has been filed.

2. The petitioner is an accused in Crime No.262 of 2023 registered for the offences punishable under Sections 294(b), 323, 506(2) and 325 of IPC. The case is now pending trial before the Judicial Magistrate No.II, Attur, in C.C.No.162 of 2024. In the said proceedings, the petitioner filed a petition in C.M.P.No.687 of 2025, seeking to recall P.W.1 to P.W.5, P.W.7 and P.W.9 for cross examination. The trial Court dismissed the petition vide order dated 03.09.2025, holding that the petition has been filed after four months only to delay the case. Hence, the present petition has been filed.

3. It is the contention of the learned counsel for the petitioner that the cross-examination of PW1 to PW5 and PW7 & PW9 are 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 to PW5 and PW7 and PW9.

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 the said witnesses were examined in the month of June and July, but the defence counsel failed to cross examine them, which clearly indicates slackness on the part of the defence. 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 witnesses to be examined without cross examination, thereby, neglecting the



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interest of the accused, is clearly unprofessional.

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7. Though the trial court was right in noting the delay, this Court, taking into account the fact that the petitioner's counsel had failed to cross-examine the witnesses earlier and had left the matter casually, is of the view that the petitioner's right should not be prejudiced due to the conduct of the counsel. 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 to PW5 and PW7 and PW9, this Court is inclined to grant one more opportunity to the petitioner to cross examine the said witness subject to payment of cost.

8. Accordingly, this Criminal Original Petition is allowed and the order passed by the learned Judicial Magistrate No.II, Attur, in CMP.No.687 of 2025 in C.C.No.162 of 2024, dated 03.09.2025, is set aside. The petitioner is directed to deposit a sum of Rs.1,500/- (Rupee One Thousand Five Hundred each) for each of the witnesses for cross-examination before the trial Court within a period of two weeks. On such deposit, the trial Court shall recall PW1 to PW5 and PW7 and PW9 and fix a date for their cross examination and the cross-examination shall be



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completed within a period of two days. 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. After examination of the witnesses, the trial Court shall disburse a sum of Rs.1,500/- to each of the witnesses, namely PW1 to PW5 and PW7 and PW9, on the date of their appearance. Consequently, connected miscellaneous petition is closed.

08.10.2025

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Neutral Citation: Yes/No

To

1. The Judicial Magistrate-II, Attur
2. The Inspector of Police,
Thammampatti Police Station,
Salem District,
3. The Public Prosecutor,
High Court of Madras.



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N. SATHISH KUMAR, J.

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