



Crl.MP.No.23446 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2025

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.MP.No.23446 of 2025

in

Crl.OP.No.22910 of 2022

1. Elizabeth

2. Rohan @ Titus

...Petitioners

Vs.

1. The State rep. by,
The Inspector of Police,
K-5, Peravallur Police Station,
Chennai.
(Crime No.333 of 2020)

2. Jayagar David

...Respondents

Criminal Miscellaneous Petition filed under Section 528 of BNSS, 2023, to restore the dismissal order dated 28.03.2024 and to restore the criminal original petition No.22910 of 2022.

For Petitioners : Mr.J.Kather Hussain

For Respondents : Mr.S.Santhosh, GA (Crl. Side), for R1



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ORDER

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Vide order dated 28.03.2024 made in Crl.OP.No.22910 of 2022, this Court had dismissed the said criminal original petition for non-prosecution and this criminal miscellaneous petition has been filed seeking to restore the said petition in Crl.OP.No.22910 of 2022.

2. Learned counsel for the petitioners submitted that as there was no appearance on behalf of the petitioners on 12.03.2024, owing to the negligence on the part of the earlier counsel on record for the petitioners, the matter was listed under the caption 'for dismissal' on 28.03.2024 and as there was no representation for the petitioners even on the said date, the same was dismissed for non-prosecution on 28.03.2024. Learned counsel further submitted that the non-appearance on the part of the earlier counsel on record for the petitioners is neither wilful nor wanton and that they have a good and meritorious case and if the present miscellaneous petition is not allowed, they will be put to great hardships. Accordingly, he prayed for appropriate orders.



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3. Per contra, the learned Government Advocate (Crl. Side) appearing for the 1st respondent submitted that after the filing of Crl.OP.No.22910 of 2022 seeking quashment of the proceedings in CC.No.2104 of 2022 on the file of the V Metropolitan Magistrate Court, Egmore, Chennai, much water has flown under the bridge, i.e., independent witnesses have been examined and the case is now posted for examination of the Investigating Officer (IO) on 19.12.2025 and no useful purpose would be served, if the main case is restored. Accordingly, he prayed for dismissal of this petition.

4. Heard the learned counsel on either side and perused the materials available on record.

5. In view of the aforesaid submission of the learned Government Advocate (Crl. Side), this Court is of the opinion that, restoring the main case for fresh adjudication by allowing this petition would be an exercise in futility, which this Court is not inclined to do.

6. At this juncture, the learned counsel for the petitioners submitted that due to pendency of the above criminal original petition, the petitioners



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have not cross-examined the witnesses. Hence, it would suffice, if this Court permits the petitioners to recall the witnesses for cross-examination.

7. In view of the above, this Court directs the petitioners to file a fresh petition under Section 311 of Cr.P.C/348 of BNSS before the trial court seeking to recall the witnesses for cross-examination on or before the next date of hearing ie., 19.12.2025. Upon filing of such petition, the trial court shall consider the same and permit the petitioners to cross-examine the witnesses by fixing a date. However, it is made clear that the petitioners shall cross-examine the witnesses on the said date to be fixed by the trial court, without seeking further adjournment, failing which, the cross-examination of the witnesses shall stand closed on the same date.

8. With the above directions and observation, this Criminal Miscellaneous Petition stands disposed of.

11.12.2025

skt

Note to office: Issue order copy on 17.12.2025.



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To:

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1. The Inspector of Police,
K-5, Peravallur Police Station,
Chennai.
2. The Public Prosecutor,
Madras High Court.
3. The V Metropolitan Magistrate Court,
Egmore, Chennai.



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A.D.JAGADISH CHANDIRA, J.

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