



1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.01.2025

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

CrI.O.P(MD).No.106 of 2025
and CrI.M.P(MD) No.83 of 2025

1. Periyasamy

2. Vinothkumar Alias Vinoth

3. Ananthan

... Petitioners

Vs

The State of Tamil Nadu
Rep. by the Inspector of Police,
Lalapet Police Station,
Karur District.
(Crime No. 365/2021).

... Respondent

Prayer: Criminal Original Petition filed under section 528 of BNSS to call for the records and set aside the order dated 09.12.2024 passed in Cr.M.P. No. 1558 of 2024 in S.C. No. 26 of 2022 by the Principal District Court, Karur.

For Petitioners : Mr. T.Lenin Kumar

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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ORDER

This Criminal Original petition has been filed to set aside the order, dated 09.12.2024 passed in Cr.M.P. No. 1558 of 2024 in S.C. No. 26 of 2022 by the Principal District Judge, Karur.

2.The petitioners are facing trial in S.C.No.26 of 2022 for offence under Sections 294(b), 342, 302, 506(2), 506(1) and 34 IPC had filed petition under Section 311 Cr.P.C before the trial Court in Cr.M.P.No.1558 of 2024 and the same came to be dismissed on 09.12.2024. Hence, this petition has been filed to set aside the aforesaid order.

3.It is the contention of the petitioners that the alleged occurrence took place between 08.00 – 08.30 p.m. In this regard, the petitioners failed to raise an pertinent question against the witnesses, who were examined as PW1 to PW4, PW12 and PW18. Since the petitioners are facing trial for the offence including capital punishment, they had filed a petition before the trial Court to recall those witnesses. However,



the trial Court without considering the same, dismissed the same by passing of impugned order.

4.The learned Additional Public Prosecutor submitted that in this case, PW1 to PW4 are the eye witnesses to the occurrence were examined on 11.11.2024. PW12, who is an observation mahazar witness was examined on 12.11.2024 and PW18, who is an investigation officer was examined on 20.11.2024. All these witnesses were cross-examined on the side of the petitioners. The petitioners/accused were questioned under Section 313(1)(b) of Cr.P.C., and the case was posted for argument. At this stage, the petitioners have filed this petition only to drag on the proceedings. Moreover, the witnesses cannot be unnecessarily called to the Court, which would harass them and they might be pressurised. The trial Court rightly dismissed the petition filed by the petitioners that they have not stated any valid reasons to recall the witnesses. Hence, there is no infirmity in the order of the trial Court and prays to dismiss the petition.



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

6. Considering the submissions raised on either side, it is seen that the petitioners seek to recall the evidence of PW1 to PW4, PW12 and PW18. In this case, PW1 to PW4 are the eye-witnesses, PW12 is the mahazar witness and the PW18 is the investigation officer. All these witnesses were extensively cross examined by the accused persons. However, the petitioners now seek to recall those witnesses, since they have failed to raise a pertinent question.

7. Though there is no infirmity in the order passed by the trial Court this Court is inclined to consider the averments raised by the petitioners, since they are facing trial for offences including capital punishment.

8. In view of the same, this Court is inclined to give one more opportunity to the petitioners only to recall PW18 during the next date of hearing (ie., 08.01.2025) itself. The learned counsel for the petitioners



are directed to recall PW18 on 08.01.2025 itself without seeking further adjournment and after completion of cross examination, the trial Court is directed to proceed with the trial as per rules.

9. With the above directions, this Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petition is closed.

07.01.2025

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order

Note : Issue order copy on 07.01.2025

PNM

To

1. The Principal District Judge, Karur.

2. The Inspector of Police,
Lalapet Police Station,
Karur District.
(Crime No. 365/2021).

3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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6



M. NIRMAL KUMAR, J.

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ORDER IN
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