

Crl.A.(MD)No.112 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 29.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.112 of 2025
and
Crl.M.P.(MD)No.1041 of 2025

1. Santhosh @ Santhoshkumar
2. Gopi @ Gopinath

... Appellants

versus

1. State through
Deputy Superintendent of Police,
Periyakulam Sub Division,
Periyakulam Police Station.

2. M.Aravindan
(R2 is suo motu impleaded as per the order of this
Court dated 28.01.2025)

... Respondents

Appeal filed under Section 14(A)(1) of the Schedule Castes and Tribes Prevention of Atrocities Act 2015 as amended by Act 1 of 2016, to call for the records relating to the order in Crl.M.P.No.1077 of 2024 dated 20.12.2024 in Spl.S.C.No.4 of 2021 on the file of the learned Special Court of Trial of Cases under SC/ST (POA) Act, Theni and set aside the same and allow the appellants to cross examine P.W.1 and P.W.2 by allowing this Criminal Appeal.



WEB COPY



Crl.A.(MD)No.112 of 2025

For Appellants : Mr.M.Prabu
For R1 : Mr.P.Kottaichamy,
Government Advocate (Crl. Side)
For R2 : No appearance

JUDGMENT

The appellants are accused Nos.4 and 5 in Spl.S.C.No.4 of 2021 on the file of the Special Court for trial of Cases under SC/ST (POA) Act, Theni. The first respondent filed a final report as against the appellants for the offence under Sections 147, 294(b), 323, 302 and 114 of IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. The final report was filed in the year 2021 and it is now pending in Spl.S.C.No.4 of 2021.

2. During the trial, P.W.1 and P.W.2 were examined in chief and were cross examined by some of the accused on 30.09.2024. However, the appellants/A4 and A5 failed to cross examine P.W.1 and P.W.2. The appellants/A4 and A5 claim that their counsel was not well on that day and therefore, they were not able to cross examine P.W.1 and P.W.2, who were



CrI.A.(MD)No.112 of 2025

present before the Court on 30.09.2024. Thereafter, on the next date of hearing, i.e. on 23.10.2024, the appellants moved a petition under Section 348 of BNSS in Cr.M.P.No.1077 of 2024 to recall P.W.1 and P.W.2 for cross examination and the same was dismissed by the trial Court that the appellants have purposely not cross examined P.W.1 and P.W.2 in order to drag on the proceedings and to harass P.W.1 and P.W.2. Aggrieved over the same, the appellants have filed this appeal.

3. This Court, while entertaining this appeal on 28.01.2025, by considering the nature of offence, *suo motu* impleaded the defacto complainant as the 2nd respondent and ordered notice to the second respondent and also granted an order of interim stay of all further proceedings in Spl.S.C.No.4 of 2021. Now, the appellants have moved a petition in CrI.M.P.(MD)No.1041 of 2025 to extend the interim order already granted by this Court on 28.01.2025.

4. The second respondent was served with notice and proof of service has also been filed to that effect. Though the name of the second respondent has been printed in the cause list, there is no representation for



Crl.A.(MD)No.112 of 2025

the second respondent.

WEB COPY

5. The learned Government Advocate (Crl. Side) submits that this is a case of the year 2021 and trial has commenced on 30.09.2024 and the appellants have intentionally not cross examined P.W.1 and P.W.2 on 30.09.2024, who were very much available in the Court for evidence. According to him, the accused Nos.1, 2, 3, 6 and 7 have cross examined P.W.1 and P.W.2 on 30.09.2024. The appellants can very well adopt the same method while cross examining other witnesses. He further submits that the appellants have moved the petition in Cr.M.P.No.1077 of 2024 under Section 348 of BNSS only on 23.10.2024 with an intention to drag on the proceedings further. However, he admits that the trial is almost completed and 13 prosecution witnesses out of 16 witnesses have already been examined.

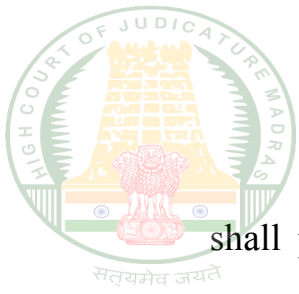
6. This Court considered the rival submissions made and also perused the materials placed on record.



7. The appellants are accused Nos.4 and 5, facing charges for the offence under Sections 147, 294(b), 323, 302 and 114 of IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. During the trial, they have failed to cross examine P.W.1 and P.W.2 on 30.09.2024, when they were examined in chief and cross.

8. The learned counsel for the appellants submits that the appellants have examined all other witnesses except P.W.1 and 2. However, they could not cross examine P.W.1 and P.W.2 due to ill-health of their counsel.

9. Since the appellants are facing charges for the offence under Sections 147, 294(b), 323, 302 and 114 of IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, they must be provided with an opportunity to cross examine P.W.1 and P.W.2. However, considering the fact that P.W.1 is a Cook and P.W.2 is a coolie and if they are re-called for cross examination, it would amount to harassment of P.W.1 and P.W.2, this Court is inclined to allow this appeal with a condition that the appellants



Crl.A.(MD)No.112 of 2025

shall pay a sum of Rs.5,000/- (Rupees five thousand) to each of the witnesses P.W.1 and P.W.2 for recalling them for the purpose of cross examination.

10. Accordingly, this Criminal Appeal is allowed and the order dated 20.12.2024 passed in Cr.M.P.No.1077 of 2024 on the file of the Special Court for trial of cases under SC/ST (POA) Act, Theni, is hereby set aside. The appellants shall file an undertaking affidavit that they are prepared to pay a sum of Rs.5,000/- to each of the witnesses P.W.1 and P.W.2. On filing of such undertaking affidavit, the trial Court shall summon P.W.1 and P.W.2 for cross examination on a particular date and the appellants have to cross examine P.W.1 and P.W.2 on that day without fail. The appellants shall pay a sum of Rs.5,000/- to each of the witnesses P.W.1 and P.W.2 on their appearance for cross examination. The trial Court shall take some endeavour to conclude the trial as expeditiously as possible. Consequently, connected miscellaneous petition is closed.

29.04.2025

ogy

NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.



CrI.A.(MD)No.112 of 2025

WEB COPY
To

1. The learned Special Court of Trial of Cases
under SC/ST (POA) Act,
Theni.
2. Deputy Superintendent of Police,
Periyakulam Sub Division,
Periyakulam Police Station.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A.(MD)No.112 of 2025

B.PUGALENDHI, J.

ogy

Crl.A.(MD)No.112 of 2025

29.04.2025