



Crl.O.P.(MD)No.1543 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2025

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.1543 of 2025

and

Crl.M.P(MD) No.1039 of 2025

1. Gopi @ Gopi Krishnan
2. Prince @ Mitta
3. Mohan @ Karuvayan

.. Petitioners

Vs.

The Inspector of Police
Uthamapalayam Police Station
Theni District

.. Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records pertaining to the order impugned dated 20.12.2024 in M.P.No.1/2024 in S.C.No.56/2003 passed by the Learned Principal District and Sessions Judge, Theni and set aside the same.

For Petitioners : Mr. A.Ramesh

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



Crl.O.P.(MD)No.1543 of 2025

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ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the order impugned dated 20.12.2024 in M.P.No.1/2024 in S.C.No.56/2003 passed by the learned Principal District and Sessions Judge, Theni and set aside the same.

2. The contention of the petitioners is that P.W.1 was examined on 01.03.2024, P.W.2 was examined on 04.03.2024, P.W.3 to 5 were examined on 02.09.2024, P.W.6 was examined on 18.09.2024, P.W.7 and 8 were examined on 17.10.2024, P.W.9 was examined on 30.10.2024, P.W. 10 was examined on 07.11.2024 and thereafter P.W.11 and 12 were examined. The petitioners are illiterates and hailing from ordinary background and they were unable to give proper explanation and details to the counsel who is appearing on behalf of them before the trial Court. Further they are some documents which have to be collected and has to be marked through the witnesses, these are the reasons for not cross examining the witnesses then and there. The petitioners are facing capital punishment hence the cross examination of witnesses before the trial Court is very much necessary. He further submitted that the trial court



giving reason that the petition has been filed for delaying the progress of trial is not proper.

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3. The learned Additional Public Prosecutor strongly opposed the contention of the petitioner stating that the petitioners are facing trial and in this case the trial commenced on 01.03.2024 and the petitioners were provided with sufficient opportunity to cross examine the witnesses. Further the date of examination is very well known to the petitioners and their advocate well in advance and the petitioners have not made any preparation for cross examination of witnesses and the counsel had not taken any steps to participate in the trial to cross examine the witnesses. Failure to cross examine is at their own risk. The fair trial ensures the right of both the witnesses and the accused. The witnesses cannot be called often causing harassment to them. Failure of accused in cross examining the witness at the appropriate stage cannot be used as a ground for recalling as it violated the rights of the witnesses despite trial process. However he fairly submitted that evidence of the witnesses would be completed only when tested by way of cross examination and it would only be beneficial for the trial Court to arrive at a just decision.



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4. At this juncture, the learned counsel appearing for the petitioners submitted that the case is posted to 10.02.2025 and he is ready to cross examine the witnesses without any further delay and within the time stipulated as fixed by the trial Court.

5. It is seen that the case is posted to 10.02.2025 for examination of further witnesses. It is case of circumstantial evidence. In view of the same, all the witnesses gains significance and cross examination of the witness is very much necessary especially in the cases of capital punishment.

6. In view of the same, this Criminal Original Petition is allowed and the impugned order passed by the learned Principal Sessions Judge, Theni dated 20.12.2024 is set aside.

7. This Court imposes a costs of Rs.1000/- to each of the witnesses namely P.W. 1to P.W.12 (Rs.1000X 12=Rs.12,000/-). The witnesses to be produced by the respondent police immediately after the next hearing date which is fixed by the trial Court. The trial Court shall fix the date for recall



Crl.O.P.(MD)No.1543 of 2025

and cross examination of P.W.1 and P.W.12 by drawing a schedule and such process to be completed within a period of two weeks from 10.02.2025. Consequently connected miscellaneous petition stands closed.

28.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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Note: Issue order copy on 30.01.2025

To

1. The Principal District and Sessions Judge, Theni
2. The Inspector of Police
Uthamapalayam Police Station
Theni District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.1543 of 2025

M.NIRMAL KUMAR,J.

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Crl.O.P.(MD)No.1543 of 2025

28.01.2025