



Crl.O.P.(MD)No.2403 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2025

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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.2403 of 2025

Rajesh

.. Petitioner

Vs.

The Sub Inspector of Police
Pudukadai Police Station
Kanyakumari District

.. Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the record and set aside the order dated 08.01.2025 made in Cr.M.P.No.390 of 2024 in S.C. No.3 of 2020 on the file of the Fast Track Mahila Court, Nagercoil Camp at Kanyakumari.

For Petitioner : Mr.A.Vasimalai

For Respondent : Mr.M.Sakthi Kumar
Government Advocate(Crl.Side)

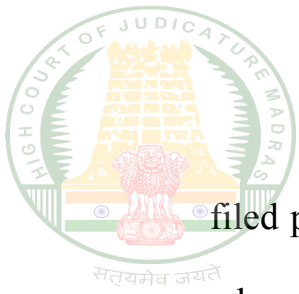
ORDER

This Criminal Original Petition has been filed to call for the records and set aside the order dated 08.01.2025 made in Cr.M.P.No.390 of 2024 in S.C. No.3 of 2020 on the file of the Fast Track Mahila Court, Nagercoil Camp at Kanyakumari.



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2. The learned counsel appearing for the petitioner would submit that the petitioner is the first accused in the main case. According to the prosecution on 11.10.2018 at about 14.15 hrs when the victim was alone in her house the accused trespassed into the house, at that time the victim asked the accused to repair the TV, using that situation he committed rape on her. Thereafter the victim had committed suicide. Hence the present First Information Report has been registered and after investigation charge sheet was filed and the same was taken on file in S.C. No. 3 of 2020 by the Fast Track Mahila Court, Nagercoil Camp at Kuzhithurai for the offences under Sections 450,376,306, 212 r/w.34 of IPC. A2 and A3 already filed a petition before this Court in Crl.O.P(MD) No.6275 of 2019 and Crl.M.P(MD) No.4146 of 2019 to quash the case against A2 and A3 and the same was allowed. Now the case is pending before Fast Track Mahila Court, Nagercoil Camp at Kuzhithurai and all the prosecution witnesses were examined and the case stands posted for arguments after examining the accused under Section 313(1)(b) of Cr.P.C., The prosecution also argued the matter on 09.10.2024 and the case stands posted for defence side arguments on 16.10.2024 and thereafter the case was posted for judgment on 27.11.2024. In the meantime the prosecution



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filed petition to examine the learned Judicial Magistrate No.III, Nagercoil who recorded the dying declaration of the deceased as prosecution witness and the same was also allowed. Already all the witnesses were examined and the case stands posted for judgment. At this stage the petition was filed by the prosecution to fill up the lacuna but the trial Court failed to consider the same and erroneously allowed the petition, great prejudice will be caused to the accused, hence he has filed the present petition.

3. The learned Government Advocate(Crl.Side) for the respondent would submit that the petitioner is the first accused in this case and already trial was over and the case stands posted for judgment. However, now prosecution noticed that the Magistrate who recorded the dying declaration of the victim was not examined as one of the witness by the prosecution. Therefore inorder to elicit truth and to ensure fair trial, they filed petition to examine the said Magistrate as one of the witness who is the material witness to prove the prosecution case. The trial Court also after elaborate discussion in order to give a fair chance to the prosecution allowed the petition, therefore the present petition is liable to be dismissed.



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4. Heard both sides and perused the materials available on record.

5. In this case it is an admitted fact that already trial was completed and after hearing arguments the case is posted for judgments. At this stage, the prosecution has filed a petition to examine the learned Magistrate who recorded dying declaration of the victim as prosecution witness. According to the prosecution due to inadvertence the Magistrate who recorded the dying declaration of the victim was not examined as witness. The said witness is a material witness to prove the dying declaration and therefore examination of the said witness is very essential to the case.

6. It is an admitted case that the learned Magistrate was cited as list witness but the prosecution failed to examine him as one of the witness. Therefore the prosecution has filed petition under Section 348 of BNSS. In this case, the learned Magistrate was cited as L.W.34 in the charge sheet to establish that he recorded the statement of the deceased prior to her death but he was not examined as witness. Therefore the prosecution has filed a petition to examine the said Magistrate who recorded the statement of the victim as witness in this case. As per Section 348 of BNSS the Court has power to examine witnesses at any stage. The learned



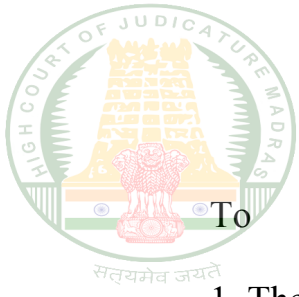
Crl.O.P.(MD)No.2403 of 2025

Magistrate has passed an elaborate and reasoned order after referring the judgments of the Hon'ble Supreme Court. The Hon'ble Supreme Court as well as this Court has already passed so many judgments that the Court at any stage of any inquiry, trial or other proceedings, summon any person as witness or examine any person in attendance, though not summoned as witness or recall and re-examine any person already examined, therefore the order passed by the learned Sessions Judge is a well reasoned order and there is no any illegality or infirmity in the order passed by the learned Sessions Judge. By examining the Magistrate who recorded the statement of the victim prior to her death no prejudice would be caused to the accused and if the witness is not examined great prejudice would be caused to the prosecution. Therefore the order of trial Court does not warrant interference. In view of the said discussion this Court is of the opinion that the present petition has no merits and deserves to be dismissed.

7. Accordingly the Criminal Original Petition stands dismissed.

07.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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- To
1. The Sub Inspector of Police
Pudukadai Police Station
Kanyakumari District
 2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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