



Crl.O.P.(MD)No.2556 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :12.02.2025

CORAM :

THE HON'BLE MR.JUSTICE P. DHANABAL

Crl.O.P.(MD)No.2556 of 2025

and

Crl.M.P.(MD)No.1738 of 2025

1. Jackson @ Jackeyjohn
2. Koolpandi
3. Sharma
4. Eswari

... Petitioners

Vs

The State through
Deputy Superintendent of Police,
Uthamapalayam Sub Division,
Rayappanpatti Police Station,
Rayappanpatti,
Theni District.
(Crime No.262 of 2014)

... Respondent

Prayer : Criminal Original Petition filed under Section 528 of BNSS, 2023, to call for the entire records pertaining to the order passed by the learned Special Court for Trial of Cases under SC/ST (POA) Act, Theni in Cr.M.P.No.1092 of 2024 against Special S.C.No.18 of 2020 dated 04.12.2024 and set aside the same by allowing this Criminal Original Petition.



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Crl.O.P.(MD)No.2556 of 2025

For Petitioners : Mr.M.Kannan

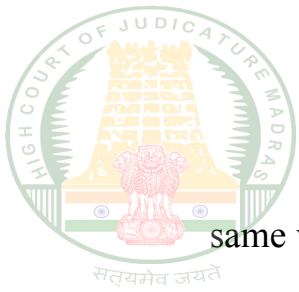
For Respondent : Mr.R.M.Anbunithi
Addl. Public Prosecutor (Crl. side)

ORDER

This criminal original petition has been filed to set aside the order passed by the Special Court for Trial of Cases under SC/ST (POA) Act, Theni in Cr.M.P.No.1092 of 2024 in Special S.C.No.18 of 2020 dated 04.12.2024.

2. The learned counsel for the petitioners would submit that these petitioners are accused in the main case. PW1 and PW2 were examined in chief on 28.10.2021. PW3 was examined in chief on 14.03.2022. PW4 and PW5 were examined in chief on 11.04.2022 and PW6 was examined in chief on 27.10.2022 and PW7 was examined in chief on 14.12.2023. But those witnesses have not been cross examined by the defence counsel due to his illness. Therefore, now the petitioners have engaged a new counsel and thereafter, PW8 and PW9 were examined in chief on 06.06.2024 and on the same day, those witnesses were cross-examined. Thereafter, they filed

<https://www.mhc.tn.gov.in> petition before the Trial Court to recall the witnesses PW1 to PW7 and the



Crl.O.P.(MD)No.2556 of 2025

same was dismissed by the Trial Court. In order to give a fair opportunity to the petitioners, witnesses have to be recalled for cross-examination but the Trial Court failed to consider the same and therefore, order passed by the Trial Court is liable to be set aside.

4. The learned Additional Public Prosecutor (Criminal Side) appearing for the respondent would submit that the PW1 and PW2 were chief examined as early as on 28.10.2021 and thereafter, on various dates other witnesses were examined in chief. But the petitioner failed to cross examine the witnesses. Already ample chance were given to the petitioners but they failed to avail those opportunities. Therefore, the order passed by the Trial Court is well reasoned order and the same is liable to be confirmed.

5. Heard both sides and perused the materials on record.

6. It is an admitted fact that already PW1 to PW7 were chief examined as early as from 28.10.2021 to 14.12.2023 on various dates. But the petitioners have failed to cross examine the witnesses and thereafter, the petitioners filed the petition to recall the witnesses for cross examination but the Trial Court dismissed the petition stating that after a long delay of



CrI.O.P.(MD)No.2556 of 2025

three years these petitioners have filed this petition and the case is related to the offence under Section 302 of IPC. If the witnesses are recalled, it will cause great hardships to the witnesses. This Court has also perused the records. It is true that PW1 to PW7 were examined in chief from 28.10.2021 to 14.12.2023. In the meantime, the petitioners have not filed any application to recall the witnesses and they filed petition belatedly after cross examination of other witnesses i.e., PW8 and PW9.

7. According to the petitioners, due to ill health, the previous counsel was unable to cross examine the witnesses on the particular date. Thereafter, they now changed the counsel and filed this petition. The charge levelled against the petitioners is under Section 302 of IPC. Though already chance was given, considering the seriousness of the charges and also to give a fair chance to the petitioners and to meet the ends of justice, this Court is inclined to allow the petition. Accordingly, this petition is allowed and the order passed by the Trial Court in Cr.M.P.No.1092 of 2024 in S.C.No.18 of 2020 dated 04.12.2024 is set aside. The petitioners jointly shall deposit a sum of Rs.1000/- each to the witnesses before the Trial Court within a period of 15 days from the date of receipt of a copy of this order. On such deposit being made, the Trial Court shall send summon to PW1 to PW7 and fix particular date and on that date, the petitioners shall cross examine the witnesses without any further delay.



Crl.O.P.(MD)No.2556 of 2025

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8. Considering the long pendency of the case, the Trial Court is directed to complete the trial of the case as early as possible, preferably within a period of 6 months from the date of receipt of this order. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes

rgm

To

The State through
Deputy Superintendent of Police,
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CrI.O.P.(MD)No.2556 of 2025

P. DHANABAL, J.

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