

Crl.O.P(MD).No.2190 of 2025

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Dated: 04.02.2025

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

Crl.O.P(MD).No.2190 of 2025
and Crl.M.P(MD).No.1529 of 2025

Rajadurai

.. Petitioner

Vs.

1.State rep., by
The Inspector of Police,
K.Pudur Police Station,
Madurai District.
Crime No.821 of 2014

2.Muthuramalingam

.. Respondents

Prayer : Petition is filed under Section 528 of BNSS to call for the records of the order in Crl.M.P.No.6311 of 2024 in CC.No.5 of 2015 dated 04.01.2025 passed by the learned Judicial Magistrate No.VI, Madurai and set aside the same as illegal and allow the petition filed under Section 311 of Cr.P.C., in Crl.M.P.No.6311 of 2024.

For Petitioner : Ms.S.Modharshini

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor



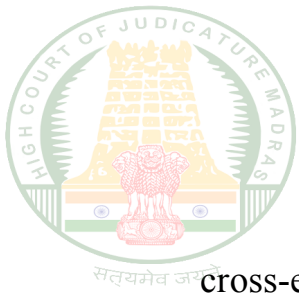
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ORDER

This petition is filed by the petitioner to set aside the order passed by the learned Judicial Magistrate No.VI, Madurai in Crl.M.P.No.6311 of 2024 in CC.No.5 of 2015 on 04.01.2025.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the second accused in CC.No.5 of 2015 on the file of the learned Judicial Magistrate No.VI, Madurai. Already, P.W.1 to P.W.3 were examined in this case, at that time, the learned counsel for the petitioner was engaged in some other things and thereby, he was unable to cross-examine the witnesses and sought for adjournment for cross-examination, but, the same was declined by the learned Magistrate. Thereafter, the petitioner filed an application under Section 311 of Cr.P.C to recall P.W.1 to P.W.3 for cross-examination and the same was dismissed vide order dated 04.01.2025. He further submitted that without cross-examination, the petitioner cannot establish his defence and the trial Court failed to consider the same and erroneously, dismissed the petition. Therefore, it is essential to provide an opportunity to the petitioner to



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cross-examine the witnesses. Therefore, filed this petition.

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3. The learned Additional Public Prosecutor appearing for the first respondent would submit that already sufficient opportunities were given to the petitioner, but he failed to avail those opportunities and now, the case is posted for examination of investigating officer. Therefore, strongly opposed to allow this petition.

4. Heard both sides and perused the records.

5. It is an admitted fact that no prosecution witnesses were cross-examined on the date of their examination. Due to non-appearance of the learned counsel appearing for the petitioner without cross-examining the witnesses, the trial Court closed the evidence of P.W.1 to P.W.3. Thereafter, the petitioner filed a petition to recall the witnesses and the same was also dismissed without giving fair chance to the petitioner and ensure the fair trial. A perusal of the impugned order the trial Court observed that the witnesses have to be cross-examined on the same day of their examination itself, however, failed to consider that no sufficient



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opportunity was given to the petitioner and this is the first time, the petitioner filed 311 Cr.P.C., petition. In view of the same, as per the principal of natural justice, it is appropriate to afford opportunity to the petitioner to cross-examine the witnesses on condition that the petitioner shall pay a sum of Rs.500/- each to the witnesses.

6. In view of the above, the impugned order passed by the learned Judicial Magistrate No.VI, Madurai, in Crl.M.P.No.6311 of 2024 in CC.No.5 of 2015 dated 04.01.2025 is hereby set aside and this Criminal Original Petition is allowed on condition that the petitioner has to deposit a sum of Rs.1,500/- before the trial Court within 15 days from the date of receipt of a copy of this order. On such deposit is being made, the learned Magistrate is directed to issue summon to P.W.1 to P.W.3 by fixing date for their cross-examination by the petitioner. Consequently, connected Miscellaneous Petition is closed.

04.02.2025

NCC : Yes/No
Index : Yes/No
Rmk



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To:

- 1.The Judicial Magistrate No.VI, Madurai.
- 2.The Inspector of Police,
K.Pudur Police Station,
Madurai District.
- 3.The Additional Public Prosecutort,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

Rmk

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