



Crl.O.P.(MD)No.2549 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.2549 of 2025

and Crl.M.P.(MD)No.1733 of 2025

1. Chellakannu

2. Raja

... petitioners

Vs

1. The State of Tamil Nadu,
Represented by the Deputy Superintendent of Police,
O/o. Deputy Superintendent of Police,
Bodinayaknaur Sub Division,
Theni District.

2. The Inspector of Police,
Taluk Police Station,
Bodinayakanur,
Theni District.
(Cr. No. 355 of 2016).

3. Nagaraj

... Respondents

Prayer : Criminal Original Petition filed under Section 528 of BNSS to set aside the order passed by the Special Court for Trial of Cases Under SC/ST (POA) Act, Theni, in Crl.M.P. No. 1138 of 2024 dated 20.01.2025 in Spl. S.C. NO. 59/2020 and permit the petitioners to recall and cross-examine P.W. 11 within a time frame fixed by this Court.



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For petitioners : Mr.R.Ganeshprabu
For R-1 & R-2 : Mr.R.M.Anbunithi
Additional Public Prosecutor (Crl. side)

ORDER

This criminal original petition has been filed by the petitioners to set aside the order passed by the Special Court for Trial of Cases Under SC/ST (POA) Act, Theni, in Crl.M.P. No. 1138 of 2024 dated 20.01.2025 in Spl. S.C. No.59 of 2020. Wherein, these petitioners have filed a petition to recall the witness P.W11 for cross-examination and the same was dismissed by the Trial Court. Challenging the same, the present petition is filed.

2. The learned counsel appearing for the petitioners would submit that these petitioners are accused in the main case and already all the witnesses were examined by the prosecution. P.W11 who is the Investigation Officer is also examined in chief. On the date of chief examination, they are unable to cross examine the witness and thereby, the Trial Court has closed the examination of P.W11 without cross-examination of witness. Therefore, they filed a petition under Section 348 of BNSS to recall P.W11 for cross-examination and the same was dismissed on 06.12.2024. Thereafter, again they filed an application and the same was also dismissed on technical ground through order dated 20.01.2025. Due to non-availability of the

<https://www.mhc.tn.gov.in/> counsel for the petitioners, who admitted in the hospital they were unable to



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cross-examine the witness. However, the Trial Court has not considered the reason and passed the impugned order. In order to give a fair chance to the petitioners, the order passed by the learned Sessions Judge is liable to be set aside.

3. The learned Additional Public Prosecutor (Criminal Side) appearing for the respondents would submit that P.W11 was chief-examined on 19.11.2024, but on that date, the counsel for the petitioners did not appear and not cross-examined. Therefore, the evidence of P.W11 was closed without cross-examination. Already the petitioners filed a petition and the same was dismissed and thereafter, again they filed a petition for the same purpose and the same was also dismissed. Therefore, the Trial Court has passed a reasoned order and the present petition is liable to be dismissed.

4. Heard the learned counsels on both sides and perused the records.

5. This is a petition filed by the petitioners to recall P.W11 - Investigation Officer in this case. It is an admitted fact that P.W11, who is the Investigation Officer was examined on 19.11.2024 and on that day, the counsel for the petitioners did not appear and therefore, did not cross-



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examine and the evidence of P.W11 was closed. According to the petitioners, the counsel for the petitioners was unable to appear due to his illness and he was hospitalized, therefore, they were unable to cross-examine the P.W.11. However no documents produced to substantiate the contention of the petitioners before the Trial Court. The Trial Court also in the order observed that already petition to recall the same witness for cross-examination was dismissed on 06.12.2024. Again for the same reason filed this petition which cannot be entertained and this case is targeted case and only to delay the proceedings this petition is filed. The Trial Court passed order on technical grounds, but not considered the fair opportunity to cross-examine the witnesses. Therefore, considering the gravity of the charges and in order to give a fair chance to the petitioners, it is appropriate to allow this application to cross-examine P.W11, since already no cross-examination was done on the side of the petitioners. In view of the same, this Court is of the opinion that the order of the Trial Court is liable to be set aside and this petition is to be allowed on condition to deposit a sum of Rs. 1000/- before the Trial Court within 15 days from the date of receipt of this Order. Thereafter, the Trial Court is directed to issue summon to P.W11 enabling the petitioners to cross-examine the witness.

6. Accordingly, this Criminal Original Petition is allowed and the



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order passed by the Trial Court in Crl.M.P.No.1138 of 2024 dated 20.01.2025 in Spl.S.C.No.59 of 2020 is set aside. Consequently, connected Criminal Miscellaneous Petition is closed.

12.02.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes

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Note: Registry is directed to issue order copy on 13.02.2025.

To

1. The Deputy Superintendent of Police,
O/o. Deputy Superintendent of Police,
Bodinayaknaur Sub Division,
Theni District.

2. The Inspector of Police,
Taluk Police Station,
Bodinayakanur,
Theni District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.,

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