



Crl.O.P.(MD)No.2457 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2025

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.2457 of 2025

Vinoth @ Mottai

.. Petitioner

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 and set aside the order passed by learned Principal Sessions Judge, Theni in M.P.No.2 of 2024 in S.C.No.56 of 2023 dated 20.12.2024 in respect of dismissing the petition filed by the petitioner under Section 348 of BNSS for examination of P.Ws.1 to P.W. 12.

For Petitioner : Mr.S.Vikram

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



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ORDER

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This Criminal Original Petition has been filed to set aside the order passed by learned Principal Sessions Judge, Theni in M.P.No.2 of 2024 in S.C.No.56 of 2023 dated 20.12.2024, wherein the petitioner has filed a petition under Section 348 of BNSS to recall P.Ws.1 to 12 for cross examination and the same was dismissed.

2. The learned counsel appearing for the petitioner would submit that the petitioner is and accused in S.C.No.56 of 2023 for the offences under Sections 120(B), 302,201,364 and 342 of IPC. The said case was posted for examination of witnesses and P.W. 1 to P.W. 12 were examined in chief. The petitioner was unable to cross examine the witnesses due to the boycott of the advocates. Thereafter the petitioner filed a petition to recall the witnesses but the same was dismissed by the Sessions Court by an order dated 20.12.2024. In order to give fair chance to the petitioner the petition is to be allowed by setting aside the order of the learned Principal Sessions Judge, Theni. He would further submit that already co-accused A2, A3 and A5 have filed a petition before this Court challenging the order passed by the learned Principal Sessions Judge, Theni in Crl.O.P(MD) No.1543 of 2025 dated 28.01.2025 and this Court has

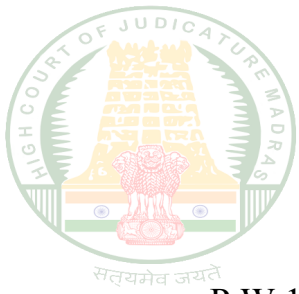


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allowed the petition with a condition to pay a sum of Rs.1000/- as costs to each of the witnesses and further the trial Court has fixed the date for cross examination of witnesses and to complete the same within a period of two weeks from 10.02.2025 therefore the same benefit has to be extended to this petitioner also.

3. The learned Government Advocate(Crl.side)appearing for the respondent would submit that the charges levelled against the petitioner are grave in nature and already witnesses were examined on 01.03.2024. At that time the petitioner has not taken any steps to cross examine the witnesses and after lapse of eight months they filed the present petition to recall the witnesses. He would further submit that the petitioner deliberately failed to cross examine the witnesses and now this petition is filed only to delay the progress of trial, therefore the present petition is liable to be dismissed. However this Court has already allowed the petition filed by the other accused in Crl.O.P(MD) No.1543 of 2025dated 28.01.2025.

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



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5. The petitioner herein is the first accused in the main case. Already P.W.1 to P.W.12 were examined in chief and due to non cross examination by the petitioner the cross examination was closed. Thereafter the petitioner filed a petition before the trial Court in M.P.No.02 of 2024 for recall of P.W. 1 to P.W. 12 but the trial Court dismissed the petition on the ground that already opportunity was given to the petitioner but he failed to cross examine the witnesses and the protection of witness is fundamental to fair trial. However the witnesses have not been cross examined so far. The principal of natural justice is also very essential for fair trial but the trial Court failed to consider the same. This Court also in the earlier application filed by the co-accused allowed the petition with some condition, therefore it is appropriate to allow this petition with the same condition.

6. In view of the same, the Criminal Original Petition stands allowed and the order passed by the learned Principal Sessions Judge, Theni dated 20.12.2024 is set aside. The petitioner shall pay a sum of Rs. 1000/- as costs to each of the witnesses P.W.1 to P.W. 12(Rs.1000X12 =Rs.12000/-) The witnesses to be produced by the respondent police immediately after the next hearing date which is fixed by the trial Court.



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The trial Court shall fix the date for recall of witnesses P.W.1 to P.W.12

by drawing schedule and such process to be completed within a period of two weeks from the date of receipt of a copy of this order..

07.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
aav

To

1. The Principal 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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P.DHANABAL,J.

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