



CRL.OP(MD).No.2638 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

CRL.OP(MD).No.2638 of 2025

Mullaivendhan @ Arjun

.. Petitioner/Accused No.2

Vs.

The State of Tamil Nadu rep.by
The Inspector of Police,
Nainarkoil Police Station,
Ramanathapuram District.
(Crime No.143 of 2022)

.. Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 528 of B.N.S.S, to call for the records and set aside the order dated 01.02.2025 made in CIS.Cr.M.P.No.33 of 2025 in C.C.No.598 of 2022, on the file of the Learned Judicial Magistrate, Paramakudi.

For Petitioner	:	Mr.R.Shenbagaraj
For Respondent	:	Mr.R.M.Anbunithi Additional Public Prosecutor (Criminal Side)



CRL.OP(MD).No.2638 of 2025

WEB COPY

ORDER

This Criminal Original Petition is filed to call for the records and to set aside the order dated 01.02.2025 made in CIS.Cr.M.P.No.33 of 2025 in C.C.No.598 of 2022, wherein the petitioner has filed the petition under Section 311 of Cr.P.C to recall the witnesses and the same was dismissed by the Trial Court. Now the said order is under challenge.

2. The learned counsel appearing for the petitioner would submit that this petitioner is an accused in the said case and already P.Ws.1 to 10 were examined between 29.02.2024 and 07.01.2025. But due to Advocates' boycott, his counsel failed to cross-examine the witnesses and failed to file petition to defer the cross-examination. Therefore, the Trial Court closed the evidence of P.Ws.1 to 10. Thereafter, the petitioners filed petition to recall the P.Ws.1 to 10 and the same was dismissed by the learned Judicial Magistrate on the ground that the petitioner has not filed any petitions at the earliest point of time and has not taken any steps to cross-examine the witnesses from past eleven (11) months, except cross-examining the P.W.8. In fact, the petitioner filed petition on 08.01.2025. Lastly, the witness was examined on 7.01.2025, therefore,



CRL.OP(MD).No.2638 of 2025

WEB COPY

one more chance has to be given to the petitioner to put-forth his defence and to cross-examine the witnesses, therefore, the order passed by the Trial Court is liable to be set aside.

3. The learned Additional Public Prosecutor would submit that already the prosecution witnesses P.Ws.1 to 10 were examined between 29.02.2024 and 07.01.2025. But the petitioner has not cross-examined the witnesses immediately after completion of chief-examination of the witnesses. Now only to delay the proceedings, this petition is filed and the Trial Court also rightly observed that for the past eleven (11) months, the petitioner has not taken any steps to cross-examine the witnesses, therefore, the order passed by the Trial Court is well-reasoned order.

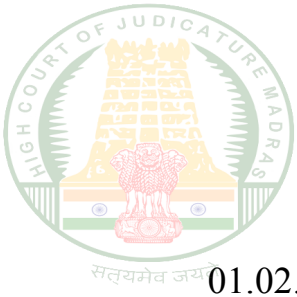
4. This Court has considered the rival submissions advanced by the learned counsel for the petitioner and the Additional Public Prosecutor for the respondent and perused all the materials available on record.



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5. In this case, it is an admitted fact that the P.Ws.1 to 10 were examined between 29.02.2024 and 07.01.2025, but witnesses were not cross-examined by the petitioner side. According to the petitioner, his counsel failed to cross-examine the witnesses due to Advocates' boycott. It is well-settled law that Advocates' boycott cannot be a reason for non cross-examination. However, so far the witnesses have not been cross-examined by the petitioner side and in order to meet the ends of justice and to give a fair chance to the petitioner, it is appropriate to permit the petitioner to cross-examine the witnesses. Though the Trial Court has recorded that for the past eleven (11) months, the petitioner has not taken any steps to cross-examine the witnesses, but P.W.8 was lastly cross-examined on 07.01.2025 and the petition has been filed on 08.01.2025. The Trial Court failed to consider that witnesses have not been cross-examined and to ensure the fair Trial, chance has to be given to the petitioner. Therefore, the order passed by the Trial Court is liable to be set aside.

6. In the result, this petition is allowed and the order passed by the Trial Court in CIS.Cr.M.P.No.33 of 2025 in C.C.No.598 of 2022 dated



CRL.OP(MD).No.2638 of 2025

WEB COPY

01.02.2025 is set aside and the petitioner is directed to deposit a sum of Rs.1,000/- each to the witnesses, before the Trial Court within fifteen (15) days from the date of this order and after depositing of the same, the Trial Court is directed to issue summons to the witnesses for cross-examination. The petitioner has to cross-examine the witnesses without getting any adjournments.

7. With the above said directions, this Criminal Original Petition is allowed.

13.02.2025

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CRL.OP(MD).No.2638 of 2025

To

- 1.The Judicial Magistrate,
Paramakudi.
- 2.The Inspector of Police,
Nainarkoil Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CRL.OP(MD).No.2638 of 2025

P.DHANABAL, J.

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CRL.OP(MD).No.2638 of 2025

Dated: 13.02.2025