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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :12.02.2025

CORAM :

THE HON'BLE MR.JUSTICE P. DHANABAL

Crl.O.P.(MD)No.2580 of 2025

Ayyappan ... Petitioner

Vs

State through the Inspector of Police,
Paramakudi Town Police Station,
Paramakudi,
Ramanathapuram District.
(Crime No.458 of 2020) ... Respondent

Prayer : Criminal Original Petition filed under Section 528 of BNSS, 2023, to set aside the impugned order passed by the Learned Judicial Magistrate, Paramakudi in CIS.Cr.M.P.No:1231 of 2024, dated: 28.01.2025 in C.C.No:326 of 2023 and consequently directing to allow to cross Examination of P.W.5 and P.W.6.

For Petitioner : Mr.P.Ponraj

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

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ORDER

This petition has been filed by the petitioner challenging the order passed by the Learned Judicial Magistrate, Paramakudi in CIS.Cr.M.P.No: 1231 of 2024, dated: 28.01.2025 in C.C.No:326 of 2023.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the accused in the main case and the prosecution examined P.W.1 to P.W.6 and P.W.1 to P.W.4 were already cross-examined by the petitioner. P.W.5 and P.W.6 have not been cross-examined. The P.W.5 and P.W.6 were examined in chief on 07.11.2024 but on that date of chief-examination, the petitioner was unable to cross-examine the witnesses. However, immediately after examination of witnesses, the petitioner filed petition to recall the P.W.5 and P.W.6 on 18.11.2024 but the said petition was dismissed by the learned Trial Court.

3. He would further submit that in order to give a fair chance to the petitioner, P.W.5 and P.W.6 have to be cross-examined. Therefore, without considering the reasons stated by the petitioner that they are unable to cross-examine on that day i.e., on 07.11.2024, due to non-availability of documents, the Trial Court erroneously passed the order. Therefore, the order passed by the learned Trial Court is liable to be set aside.

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4. The learned Additional Public Prosecutor (Criminal Side) appearing for the respondent would submit that P.W.1 to P.W.4 were already cross-examined by the petitioner. P.W.5 and P.W.6 were chief-examined on 07.11.2024, but on that date, the counsel for the petitioner did not appear and not cross-examined. Therefore, the Trial Court has closed the examination of P.W.5 and P.W.6 without cross-examination of witnesses. Thereafter, the petitioner has filed a petition under Section 348 of BNSS on 18.11.2024 to recall P.W.5 and P.W.6 for cross-examination but the Trial Court correctly dismissed the petition that for the past three months the petitioner has not cross-examined the witnesses. Therefore, the Trial Court has passed a reasoned order and the present petition is liable to be dismissed.

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

6. In this case, the petitioner is an accused and already witnesses were cross-examined but P.W.5 and P.W.6 have not been cross-examined by the petitioner. According to the petitioner, due to non-availability of some documents, they are unable to cross-examine the witnesses on the same day. P.W.5 and P.W.6 were chief-examined on 07.11.2024. After obtaining the

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documents the petitioner filed a petition under Section 348 of BNSS on 18.11.2024 but the learned Trial Court dismissed the petition by observing that other witnesses viz., P.W.1 to P.W.4 were cross-examined on 24.06.2024 and 22.07.2024. They were not cross examined on the same day and filed a petition to cross-examine the witnesses after months together. This petition also filed after a month and therefore, only to delay the proceedings the present criminal original petition has been filed.

7. On perusal of the records, it is seen that the date of chief-examination was 07.11.2024 and the petition was filed on 18.11.2024 within a period of 10 days after the date of examination. But the Trial Court failed to consider the same and referred to the previous cross-examination and dismissed this petition as if this petition was filed after a month. Therefore, the above said observations of the learned Magistrate is not correct and in order to give a fair chance to the petitioner and to meet the ends of justice as to ensure and to ensure the fair trial, it is appropriate to allow this petition by setting aside the order passed by the Trial Court.

8. In the result, this petition is allowed by setting aside the orders of the learned Magistrate, Paramakudi in CIS.Cr.M.P.No:1231 of 2024, dated: 28.01.2025 in C.C.No:326 of 2023. The petitioner is directed to deposit a

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sum of Rs.1000/- each to the witnesses 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.W.5 and P.W.6 enabling the petitioners to cross-examine the witnesses.

9. With the above said directions, this criminal original petition is allowed. No costs.

12.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
rgm

To

State through the Inspector of Police,
Paramakudi Town Police Station,
Paramakudi,
Ramanathapuram District.
(Crime No.458 of 2020)

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P. DHANABAL, J.

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