



CRL.OP(MD) NO.2961 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL. O.P(MD) No.2961 of 2025

Vaippu Thevar

... Petitioner

vs.

The State
Rep. through the Deputy Superintendent of Police,
Andipatti Sub Division,
Mayiladumparai Police Station,
Theni.
(Crime No.255 of 2016)

... Respondents

PRAYER: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, to call for the records and set aside the order passed by the learned Special Court for Trial Cases under SC/ST (POA) Act, Theni in C.R.M.P.No.1154 of 2024 in Spl.S.C.No.61 of 2020, dated 22.01.2025 in respect of dismissing the petition filed by the petitioner under Section 348 of BNSS for examine the P.W.1 and P.W.2.

For petitioner : Mr.S.Vikram

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



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ORDER

This petition has been filed by the petitioner to set aside the order passed by the learned Special Court for Trial Cases under SC/ST (POA) Act, Theni in C.R.M.P.No.1154 of 2024 in Spl.S.C.No.61 of 2020, dated 22.01.2025, in respect of dismissing the petition filed by the petitioner under Section 348 of BNSS for examine the P.W.1 and P.W.2.

2. The learned counsel for the petitioner would submit that the petitioner is the accused in the main case and in the main case, already P.W.1 and 2 were examined on 09.03.2021, i.e., during covid 19 pandemic. Due to ill health, the counsel for the petitioner was unable to attend the Court on the particular date and thereby, he could not cross-examine the witnesses. Therefore, the petitioner filed a petition in CR.M.P.No.1154 of 2024 in Spl.S.C.No.61 of 2020 to recall the witnesses/P.W.1 and 2 for cross-examination. But, the Trial Court dismissed the petition, on 21.01.2025, on the ground of delay. Therefore, the order passed by the Trial Court is liable to be dismissed.

3. The learned Government Advocate (Crl.Side) would submit that

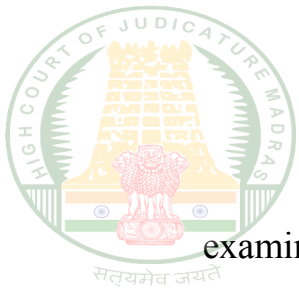


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the witnesses were chief examined on 09.03.2021. On that day, the petitioner was represented by his junior counsel, but, cross-examination was not conducted, on that day. Thereafter, the petitioner has not taken any steps to cross-examine the witnesses for the past three years and nine months. Belatedly, now, he filed this petition. Therefore, the Trial Court, after considering the delay, dismissed the petition. Hence, the present petition is liable to be dismissed.

4. This Court heard both sides and perused the records.

5. In this case, the petitioner is the accused. P.W.1 and 2 were chief examined on 09.03.2021, i.e., during Covid-19 pandemic period, but not cross-examined. However, no steps have been taken by the petitioner for the past three years and nine months and recently, they filed the petition. Therefore, the Trial Court dismissed the petition. The Trial Court in that order, discussed about the delay and only on that ground, dismissed the petition. Non-taking of steps to file petition to recall the witnesses within time and delay in filing petition alone is not a ground to deny opportunity to cross-examine the witnesses. The Trial Court failed to consider that no opportunity was given to cross-examine the witnesses and without cross-



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examining the witnesses, the case cannot be disposed of in a fair manner.

There is no dispute that the witnesses were chief examined during Covid-19 period. Therefore, to ensure fair trial and to give one more opportunity to the petitioner and to meet ends of justice, it is appropriate to allow this petition.

6. In the result, this Criminal Original Petition is **allowed** and the order passed in C.R.M.P.No.1154 of 2024 in Spl.S.C.No.61 of 2020, dated 22.01.2025, is set aside. The petitioner is directed to deposit Rs.1,000/- each to the witnesses before the Trial Court and after deposit of such money, the Trial Court is directed to summon the witnesses/P.W.1 and 2. After appearance of the witnesses, the petitioner shall cross-examine the witnesses on the same date itself and thereafter, the said deposited amount has to be paid to the witnesses/P.W.1 and 2.

18.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd



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To

1.The Deputy Superintendent of Police,
Andipatti Sub Division,
Mayiladumparai Police Station,
Theni.

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



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P.DHANABAL,J

apd

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