

Crl.O.P.(MD)No.3337 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED :24.02.2025

CORAM :

THE HON'BLE MR.JUSTICE P. DHANABAL

Crl.O.P.(MD)No.3337 of 2025

and

Crl.M.P.(MD) No.2301 of 2025

Murugesan

... Petitioner

Vs.

The State of Tamil Nadu,
Represented by the Deputy Superintendent of Police,
Uthamapalayam Sub Division,
Cumbum South Police Station,
Theni District.
Crime No. 791/2020.

... Respondents

Prayer : Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records and set aside the order dated 26.12.2024 passed in Cr.M.P No. 1104 of 2024 in Spl. S.C No.197 of 2020 on the file of the learned Court for trial cases under SC/ST Act, Theni.

For Petitioner : Ms.M.Shan Malar
for Mr.R.Ilayaraja

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



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ORDER

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This petition has been filed to set aside the order passed in Cr.M.P No. 1104 of 2024 in Spl. S.C No.197 of 2020 dated 26.12.2024 on the file of the Special Court for trial cases under SC/ST (POA)Act, Theni.

2. The learned counsel appearing for the petitioner would submit that the petitioner is arrayed as A1 in this case, trial was commenced and P.W.1 to P.W.3 were examined in chief on 27.06.2024 and P.W.4 and P.W.5 were examined in chief on 22.10.2024, but not cross examined. The previous counsel for this accused was not able to get documents and due to want of some material documents, he was unable to cross examine the prosecution witnesses on the date of their chief examination. The non cross examination of witnesses is neither wilful nor wanton. Thereafter, the petitioner filed a petition to recall the witnesses but the trial Court dismissed the petition stating that P.W.1 belonged to scheduled community, PW.2 is doing work of pasting posters in the wall, P.W.3 is the driver, P.W. 4 is the house wife and P.W.5 is doing leather business and on the date of examination of these witnesses the counsel for the accused was also present before the Court, but he was not ready to cross examine the witnesses, it clearly shows that in order to drag the proceedings he has not cross examined the witnesses. However, the trial court failed to consider the



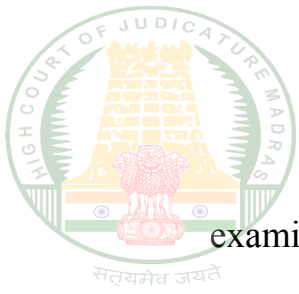
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reasons stated by the petitioner and the witnesses were not subjected for cross examination. Therefore, in order to give a fair chance to the petitioner and to meet the ends of justice the witnesses have to be recalled for cross examination and hence the order passed by the trial Court is liable to be set aside.

3. The learned Government Advocate(Crl.Side) appearing for the respondent would submit that already on the side of the prosecution P.W.1 to P.W. 5 were examined in chief but they were not cross examined . Though sufficient opportunity was given to the petitioner he failed to avail those opportunities and the reasons stated by the petitioner that his previous counsel was changed is not acceptable and trial Court has passed a well reasoned order and thereby the petition is liable to be dismissed.

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

5. According to the petitioner P.W.1 to P.W. 5 were examined in chief but they have not been cross examined. The reason for non cross examination is that previous counsel was changed, thereby unable to cross examine the witnesses. They filed a petition before the trial Court and the same was dismissed by the trial court by observing that on the date of



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examination of these witnesses, the counsel for the accused was also present before the Court, but he was not ready to cross examine the witnesses. In this case, it is an admitted fact that the prosecution witnesses were not cross examined. The petitioner's contention is that due to non availability of some documents, they unable to cross examine the witnesses by his previous counsel. Now they changed the counsel and the present counsel filed the petition. Though there are no valid grounds raised by the petitioner in the petition due to non cross examination of witnesses and this petition is filed as first time, one more chance should be given to the petitioner. Therefore, inorder to give fair chance to the petitioner the trial Court ought to have allowed the petition since the prosecution witnesses were not cross examined. According to the learned counsel appearing for the petitioner his previous counsel was changed, thereby he was unable cross examine the witnesses. Taking into consideration the gravity of offence and inorder to give one more chance to the petitioner and to meet the ends of justice this Court is inclined to allow the petition. Moreover the trial Court dis believed the reasons stated by the petitioner and failed to consider that this is the first petition filed by the petitioner, therefore the order passed by the trial Court is liable to be set aside.

6. In view of the same, the Criminal Original Petition stands allowed



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and the order passed in Cr.M.P.No.1104 of 2024 dated 26.2.2024 in Spl.S.C.No.197 of 2020 on the file of the Special Court for trial of cases under SC/ST(PoA) Theni is set aside. The petitioner shall deposit a sum of Rs. 1000/- as costs to each of the witnesses before the trial Court within a period of fifteen [15] days from the date of receipt of a copy of this order. After deposit of the amount the trial Court is directed to issue summons to the petitioner by fixing the date for cross examination of witnesses and the petitioner shall cross examine the witnesses without any further delay. Consequently connected miscellaneous petition stands closed.

24.02.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes

mac/aav

To

1. The Special Court for trial of cases under SC/ST(PoA) Theni
2. The Deputy Superintendent of Police,
Uthamapalayam Sub Division,
Cumbum South 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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