

Crl.O.P.(MD)No.3517 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED :25.02.2025

CORAM :

THE HON'BLE MR.JUSTICE P. DHANABAL

Crl.O.P.(MD)No.3517 of 2025

and Crl.M.P.(MD) No.2439 of 2025

1. M.Anand
2. M. Ramesh Pandi
3. S.M.Palani
4. Kavitha
5. Raji
6. Poomayil

... Petitioners

Vs.

The State of Tamil Nadu,
Represented by the Sub Inspector of Police,
Thirunagar Police Station,
Madurai City.
Crime No. 1013 of 2020.

... Respondent

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 passed by Judicial Magistrate No.VI, Madurai, dismissing Cr.M.P.No. 4174 of 2024 on 28.10.2024 and consequently allowed the recall petition filed by the petitioners under Section 311 Cr.P.C.

For Petitioners : Mr.Baburajendran

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



Crl.O.P.(MD)No.3517 of 2025

ORDER

WEB COPY

This petition has been filed to set aside the order passed in Cr.M.P No.4147 of 2024 in C.C.No.515 of 2021 dated 28.10.2024 on the file of the Judicial Magistrate No.VI, Madurai.

2. The learned counsel appearing for the petitioners would submit that the petitioners are arrayed as A1 to A6 in this case and already trial was commenced and P.W.2 to P.W.4 were examined in chief on 01.07.2023 but not cross examined. P.W.5 was examined in chief and cross examined on 31.11.2023 and P.W.6 was examined in chief on 21.12.2023 but those witnesses were not cross examined. 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 the accused failed to cross examine the witnesses on the date of chief examination and no reason assigned by the accused for non cross examination of witnesses. Therefore in order to give a fair chance to the petitioners 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 (Criminal Side) appearing for



Crl.O.P.(MD)No.3517 of 2025

the respondent would submit that already on the side of the prosecution P.W.1 to P.W.6 were examined in chief and P.W.5 alone was cross examined. Though sufficient opportunities were given to the petitioners they failed to avail those opportunities and no reason was stated by the petitioners for non cross examination of the witnesses and they failed to cross examine the witnesses when they were examined in chief 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.

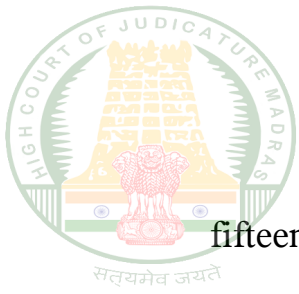
5. According to the petitioners P.W.1 to P.W.6 were examined by the prosecution, and P.W.5 alone was cross examined and other witnesses were not cross examined. Therefore, the petitioner filed a petition before the trial Court for recall of the witnesses and the same was dismissed by the trial court by observing that accused failed to cross examine the witnesses on the date of chief examination and no reason assigned by the accused for non cross examination of witnesses. In this case, the petitioners have not stated valid reasons in the petition, however the witnesses were not cross examined. It is true the petitioner has not stated any reasons in the petition, and in the printed format, the names of the parties alone filled up.



Crl.O.P.(MD)No.3517 of 2025

Therefore, it is the mistake committed by the counsel appeared for the petitioner before the Trial Court, but at the same time, due to the mistake committed by the counsel, the parties cannot suffer. In exceptional cases, this Court can consider even any mistake committed by the counsel considering the nature of case. The trial Court also while numbering the petition shall scrutinize the petition thoroughly and these types of petitions ought to have been rejected at the threshold itself. So that the parties can file fresh petition with correct particulars. Therefore, in order to give fair chance to the petitioners the trial Court ought to have allowed the petition since the prosecution witnesses were not cross examined Taking into consideration the gravity of offence and in order to give one more chance to the petitioners and to meet the ends of justice this Court is inclined to allow the petition. Moreover the trial Court failed to consider that this is the first petition filed by the petitioners, therefore the order passed by the trial Court is liable to be set aside.

6. Accordingly, this Criminal Original Petition is allowed and the order passed in Cr.M.P No.4147 of 2024 dated 28.10.2024 in C.C.No.515 of 2021 on the file of the Judicial Magistrate No.VI, Madurai is set aside. The petitioners shall deposit a sum of Rs.1000/- (Rupees Thousand only) as costs to each of the witnesses before the trial Court within a period of



Crl.O.P.(MD)No.3517 of 2025

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 petitioners by fixing the date for cross examination of witnesses and the petitioners shall cross examine the witnesses without any further delay. Consequently connected miscellaneous petition stands closed.

25.02.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes

mac/aav

To

1. The Judicial Magistrate No.VI, Madurai
2. The Sub Inspector of Police,
Thirunagar Police Station,
Madurai City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.3517 of 2025

P. DHANABAL, J.,

mac/aav

Crl.O.P.(MD)No.3517 of 2025
and Crl.M.P.(MD) No.2439 of 2025

25.02.2025