



CRL.OP(MD) No.4575 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL.O.P (MD). No.4575 of 2025

and CRL.M.P (MD) No.3267 of 2025

Ramesh

... Petitioner

Vs.

The State of Tamil Nadu,
Represented by the Inspector of Police,
Musiri Police Station,
Trichy District.
Crime No.23 of 2022.

... Respondent

PRAYER: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, to call for the record and set-aside the order passed in CrI.M.P.No.1835 of 2023 dated 08.01.2025 in S.C.No.189 of 2023 on the file of Learned Sessions Judge, Mahila Court, Tiruchirapalli.

For Petitioner : Mr.Sma Jinnah,

For Respondent : Mr.M.Sakthi Kumar

Government Advocate (Crl. Side)

ORDER

This petition has been filed by the petitioner to set-aside the order



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passed in Crl.M.P.No.1835 of 2023 dated 08.01.2025 in S.C.No.189 of 2023 on the file of Learned Sessions Judge, Mahila Court, Tiruchirapalli.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the sole accused in this case and already some of the prosecution witnesses were examined. While examination of P.W.1-V.Veeramani, due to Advocates boycott, the counsel for the petitioner was unable to cross-examine the P.W.1 and thereby, the petition filed by the petitioner under Section 311 of Cr.P.C for recall of witness was dismissed by the trial Court on the ground that P.W.1 was examined on 06.03.2024, but he was not cross-examined and P.W.1 is suffering from severe ailments and he is unable to speak due to disability. The reasons stated by the Trial Court is not a ground to deny the cross-examination and in order to ensure the fair Trial, an opportunity has to be given to the petitioner to put forth his defence through cross-examination of witness. Therefore, the order passed by the trial Court is liable to be set aside.

3. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that in this case, already the P.W.1 was examined on 06.03.2024 and on that date, due to Advocates boycott, the



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counsel for the petitioner did not cross-examine the witness. Thereafter, he filed a petition for recall of the P.W.1 and the Trial Court, after recording the reasons that P.W.1 suffers from severe ailments and unable to speak due to disability, has declined to allow the petition. Therefore, the order passed by the Trial Court is reasoned order and 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 and P.W.1 was already examined on 06.03.2024. On that date, due to Advocates boycott, P.W.1 was not cross-examined and thereby, he filed a petition to recall the witness and the same was dismissed by the Trial Court on the ground that P.W.1 is unable to speak well. It is an admitted fact that, on the date of examination, there was Advocates boycott and the counsel for the petitioner was unable to cross-examine the witness. Though the boycott is not a reason for non cross-examination of the witness, in order to ensure the fair trial and in order to give a fair chance to the petitioner, the Trial Court ought to have allowed the petition and only based on the ailment to the witness the Trial Court cannot decline the right of the petitioner for



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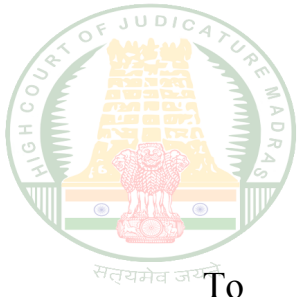
cross-examination. Therefore, the order passed by the Trial Court is liable

to be set aside.

6. Accordingly, this criminal original petition is allowed and the order passed by the Trial Court in Crl.M.P.No.1835 of 2023 in S.C.No. 189 of 2023 dated 08.01.2025 on the file of Learned Sessions Judge, Mahila Court, Tiruchirapalli is set aside. The petitioner is directed to deposit a sum of Rs.1000/- [Rupees one Thousand only] towards costs to the witness before the Trial Court within a period of fifteen [15] days from the date of this Order. Thereafter, the Trial Court has to issue summon to the P.W.1-V.Veeramani by fixing a particular date for cross-examination and on that date, the petitioner has to cross-examine the witness. Consequently, connected criminal miscellaneous petition is closed.

12.03.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

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1. The Inspector of Police,
Musiri Police Station,
Trichy District.

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



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P.DHANABAL.J.,

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