



Crl.O.P.(MD)No.4476 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2025

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.4476 of 2025

1. S.Rajasekaran
2. Kalyani
3. S.Yogeswaran
4. S.Arunkumar

.. Petitioners

Vs.

The Inspector of Police
All Women Police Station
Nagercoil
Kanyakumari District

.. Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to set aside the order dated 19.02.2025 passed in Cr.M.P.No.1199 of 2023 CC No.12 of 2018 on the file of the Additional Mahial Court at Nagercoil

For Petitioners : Mr.A.Mohamed Haneef
For Respondent : Mr.M.Sakthi Kumar
Government Advocate(Crl.Side)

ORDER

This Criminal Original Petition has been filed to set aside the order passed in Cr,M.P.No.1199 of 2023 in C.C.No.12 of 2018 dated 19.02.2025 by the Additional Mahila Court at Nagercoil.



WEB COPY

2. The learned counsel appearing for the petitioners would submit that the petitioners are the accused in this case. In this case trial commenced and P.W.1 to P.W.7 were examined in chief but they were not cross examined by the petitioners. On the date of examination of witnesses the learned Counsel appearing for the petitioners and the first accused fell ill thereby they were unable to cross examine the witnesses on that particular date. The non cross examination of witnesses is neither wilful nor wanton. Thereafter they filed a petition to recall the witnesses but the trial Court dismissed the petition stating that the petition has been filed after a lapse of several years from the date of examination of witnesses in chief and to drag the proceedings this petition is filed. 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(Crl.Side) appearing for the respondent would submit that already on the side of the prosecution P.W.1 to P.W. 7 were examined in chief but they were not cross examined . Though sufficient opportunities were given to the petitioners they failed



to avail those opportunities and the reasons stated by the petitioners are 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 petitioners P.W.1 to P.W. 7 were examined in chief but they have not been cross examined. The reason for non cross examination is that their counsel and the first accused fell ill, 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 after a lapse of several years from the date of examination of witnesses in chief the present petition has been filed and it is filed only to drag the proceedings. In this case it is the petitioners have not cross examined the witnesses, therefore inorder to give fair chance to the petitioners 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 petitioners their counsel was unable cross examine the witnesses due to his illness. Taking into consideration the gravity of offence and inorder to give one more chance to the petitioners and to meet the ends of justice



Crl.O.P.(MD)No.4476 of 2025

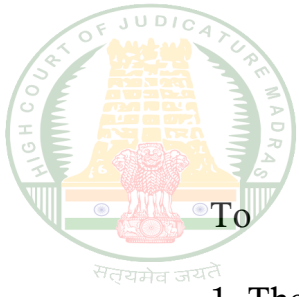
this Court is inclined to allow the petition. Moreover the trial Court disbelieved the reasons stated by the petitioner and failed to consider that this is the first petition filed by the petitioners, therefore the order passed by the trial Court is liable to be set aside.

6. In view of the same, the Criminal Original Petition stands allowed and the order passed by the Additional Mahila Court at Nagercoil in Cr.M.P.No.1199 of 2023 C.C.No.12 of 2018 dated 19.02.2025 is set aside. The petitioners shall deposit a sum of Rs. 1000/- as costs to each of the witnesses before the trial Court. 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.

11.03.2025

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

aav



Crl.O.P.(MD)No.4476 of 2025

To

WEB COPY

1. The Additional Mahila Court at Nagercoil
2. The Inspector of Police
All Women Police Station
Nagercoil
Kanyakumari District
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai



WEB COPY



Crl.O.P.(MD)No.4476 of 2025

P.DHANABAL,J.

aaV

Crl.O.P.(MD)No.4476 of 2025

11.03.2025