

Crl.O.P.(MD)No.5684 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.03.2025

CORAM :

THE HON'BLE MR.JUSTICE P. DHANABAL

Crl.O.P.(MD) No.5684 of 2025

and Crl.M.P(MD) No.4127 of 2025

Navaneethakrishnan

... Petitioner

Vs.

The State of Tamil Nadu,
Represented by the Inspector of Police,
Thenkarai Police Station,
Theni District.
Crime No.115 of 2022.

...Respondent

Prayer : Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records made in Crl.M.P No. 499 of 2024 in S.C.No.145 of 2022 on the file of the Sessions Judge, Fast Track Mahila Court, Theni District dated 23.11.2024 and set aside the same.

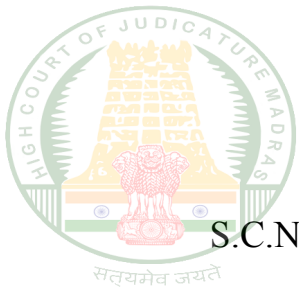
For Petitioner : Mr. A. Joseph Jerry

For Respondent : Mr.M.Sakthi Kumar

Government Advocate (Crl. Side)

ORDER

This petition has been filed by the petitioner to set aside the order passed by the Trial Court in Crl.M.P.No.499 of 2024 dated 23.11.2024 in



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S.C.No.145 of 2022 on the file of the learned Sessions Judge, Fast Track Mahila Court, Theni District. Wherein, the petitioner has filed a petition to recall the P.W.3 and the same was dismissed by the Trial Court. Against which, the present petition is filed.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the sole accused in this case and he is facing trial in S.C.No. 145 of 2022 for the offences under Sections 354A(1)(i), 506(2), 376 and 511 of Indian Penal Code, 1860. While so, P.W.1 to 3 were already examined on the side of the prosecution, but the petitioner was unable to cross examine the witnesses and the petitioner was inside the judicial custody in another case on those days. While so, the petitioner has filed a petition to recall the witnesses P.W.1 and P.W.2 and the same is pending. Thereafter, the petitioner has filed another petition to recall the witness P.W.3 and the same was dismissed by citing the reason that already sufficient opportunities were given and the counsel for the petitioner was also present on the date of chief examination. The Trial Court is failed to consider that the witnesses were not cross examined and the petitioner was inside during the chief examination and the petition is the first petition. Therefore, the order passed by the Trial Court is liable to be set aside.

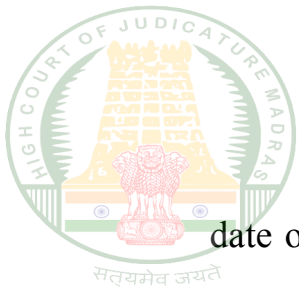


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3. The learned Government Advocate (criminal side) appearing for the respondent would submit that already the P.W1 to 3 were examined in chief, but on that date, though the counsel appearing for the petitioner was present, but he failed to cross examine the witnesses. Now, only to delay the proceedings, the present petition is filed. Therefore, the Trial Court has passed a reasoned order and therefore, the present petition is liable to be dismissed.

4. Heard both sides and perused the records.

5. The petitioner's contention is that he is the accused in this case and while he was in judicial custody in another case, the P.W.1 to 3 were examined in chief and thereby, he was unable to cross examine the witnesses. According to the respondent, on date of chief examination of witnesses, the counsel for the petitioner was present, but failed to cross examine. Therefore, already ample chances were given, but those opportunities were not availed by the petitioner. This Court also perused the order passed by the Trial Court and the Trial Court passed the order by observing that P.W.1 to 3 were coolie workers and on the date of examination of chief, the petitioner's counsel was also present and it is the discretion of the Court to allow the petition. There is no dispute that on the



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date of examination of witnesses the petitioner was under judicial custody.

Though the counsel for the petitioner was present, but not cross examined the witnesses and the petition is the first petition filed by the petitioner and the witnesses were not cross examined. Therefore, in order to give a fair chance to the petitioner and to meet the ends of justice and considering the gravity of offences, this Court is inclined to allow this petition by setting aside the order passed by the Trial Court.

6. Accordingly, this criminal original petition is allowed and the order passed in Crl.M.P.No.499 of 2024 dated 23.11.2024 on the file of the Fast Track Mahila Court, Theni District is set aside. The petitioner is directed to pay a sum of Rs.1000/- [Rupees Thousand only] to the witness and deposit the same 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.W3 by fixing a particular date for cross examination and on that day, the petitioner has to cross examine the witness. Consequently, connected criminal miscellaneous petition is closed.

27.03.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes

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To

1. The Fast Track Mahila Court,
Theni District

2. The Inspector of Police,
Thenkarai 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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