



CrI.O.P.(MD)No.5697 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 27.03.2025

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

CrI.O.P.(MD)No.5697 of 2025

and

CrI.M.P(MD) No.4146 of 2025

Chithra

.. Petitioner

Vs.

The Inspector of Police
Aundipatti Police Station
Theni District

.. Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to set aside the impugned order dated 25.02.2025 in Cr.M.P.No.663 of 2024 in S.C.No.70 of 2020 on the file of the learned Sessions Judge, Fast Track Mahila Court, Theni by allowing this petition.

For Petitioner : Mr.R.Shankar Ganesh

For Respondent : Mr.M.Sakthikumar
Government Advocate(CrI.Side)



CrI.O.P.(MD)No.5697 of 2025

ORDER

WEB COPY

This Criminal Original Petition has been filed to set aside the order passed in Cr.M.P.No.663 of 2024 in S.C.No.70 of 2020 dated 25.02.2025 by the learned Sessions Judge, Fast Track Mahila Court, Theni.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the second accused in this case. In this case on 03.01.2022 and 10.03.2023 P.W.8 and P.W.20 were examined in chief and on that date P.W.8 was treated as hostile, thereby he did not cross examine P.W.8. The counsel for the accused was unable to cross examine P.W.20 as he did not receive complete instructions, therefore it is necessary to recall P.W.8 and P.W.20 for cross examination. The non cross examination of witness is neither wilful nor wanton. Thereafter he filed a petition to recall the witnesses but the trial Court dismissed the petition stating that P.W.8 was examined in Chief on 03.02.2022 and he turned hostile but this witness was cross examined in detail by the defence counsel and the reason for the death of Thavamani was also elucidated through cross examination, therefore recalling of witness is not necessary. With regard to P.W.20, he is Grade-I Constable and on 10.03.2023 and he is an official witness, if he is recalled it will cause hardship to his duty and



the reasons stated by the learned counsel appearing for the petitioner is not acceptable. The said reasons stated by the trial Court are not legally acceptable, 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.8 and P.W. 20 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 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. 8 and P.W. 20 were examined in chief but not cross examined. The reason for non cross examination is that P.W.8 was treated as hostile and he did not receive complete instructions for cross examining P.W.20. Therefore the petitioner has filed a petition before the trial Court and the same was dismissed by the



WEB COPY

trial court by observing that P.W.8 was declared hostile and P.W. 20 was the official witness. Merely because the witness is an official witness and his duty would affect by recalling the witness is not a valid reason for not allowing the recall petition. The trial Court ought to have allowed the petition since it is a first petition and no witness cross examined. As far as witness P.W.8 is concerned he was treated as hostile, however need not be recalled for cross examination. Therefore inorder to give a fair chance to the petitioner 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 inorder to give one more chance to the petitioner and to meet the ends of justice this Court is inclined to allow the petition. 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 in respect of P.W. 20 and dismissed in respect of P.W.8 and the order passed by the learned Sessions Judge, Fast Track Mahila Court, Theni in Cr.M.P.No.663 of 2024 in S.C.No.70 of 2020 dated 25.02.2025 is set aside. The petitioner shall deposit a sum of Rs. 1000/- as costs before the trial Court within a period of 15 days from the date of receipt



Crl.O.P.(MD)No.5697 of 2025

of a copy this Court and thereafter the trial Court has to issue summons to

P.W. 20 by fixing the date for cross examination of witness. On that date

the petitioner has to cross examine P.W. 20 without any further delay.

Consequently connected miscellaneous petition stands closed.

27.03.2025

NCC : Yes/No

Index : Yes / No

Internet : Yes / No

mac/aav

To

1. The Sessions Judge, Fast Track Mahila Court, Theni

2. The Inspector of Police
Aundipatti Police Station
Theni District

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



WEB COPY



CrI.O.P.(MD)No.5697 of 2025

P.DHANABAL,J.

mac/aav

CrI.O.P.(MD)No.5697 of 2025

27.03.2025