



CRL.OP(MD) NO.5916 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL. O.P(MD) No.5916 of 2025

and

CRL. M.P.(MD) No.4319 of 2025

Antony Muthu D.Thangaraj

... Petitioner

Vs.

The State of Tamil Nadu,
rep by the Inspector of Police,
All Women Police Station,
Kanniyakumari.
(Crime No.12 of 2011)

... Respondent

PRAYER: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 to call for the records pertaining to the impugned order passed in Cr.M.P.No.136 of 2025, dated 06.03.2025 in C.C.No.71 of 2018 on the file of the Additional Mahila at Nagercoil and set aside the same by allowing this petition.



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For petitioner :Ms.Auxillia Peter
For respondent : Mr.M.Sakthi Kumar,
Government Advocate (Crl.Side)

ORDER

This petition is filed by the petitioner to set aside the order passed by the Trial Court in a petition filed by the petitioner to recall the witnesses P.W.1 to P.W.5.

2. The learned counsel appearing for the petitioner would submit that the petitioner is accused in the main case and already, P.W.1 to P.W.8 were examined. P.W.1 to P.W.5 have not been cross-examined on the side of defence. Hence, the petitioner filed a petition to recall the P.W.1 to P.W.5 for cross-examination and the same was dismissed by the Trial Court. In fact, on the date of examination of the witnesses, the counsel, from Chennai, was unable to appear, hence, unable to cross-examine the witnesses.

3. The learned Government Advocate (Crl.Side) appearing for the respondents would submit that already ample chances given to the



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petitioner, but not availed those opportunities and the Trial Court also passed reasoned order and no any grounds to allow this petition.

4. This Court heard both sides and perused the records.

5. In this case, it is an admitted fact that P.W.1 to P.W.5 were already examined on various dates, but not cross-examined. The petitioner also in the Trial Court, not stated any valid reasons. However, only because of the negligence on the counsel, the litigant cannot suffer. It is the duty of the counsel to state the reasons for non-cross-examination while filing the petition, but in this case, without stating reasons, the petition was filed by the counsel. The Trial Court also failed to consider that the petition was filed by the counsel on behalf of the accused and failed to consider that this is the first application filed by the petitioner to recall the witnesses for cross-examination.

6. Though there is no valid reasons stated in the petition filed by the petitioner, since the witnesses have not been cross-examined so far, without going into the merits of the petition in order to give a fair chance to the petitioner, this Court is inclined to allow this petition by setting



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aside the order passed by the Trial Court.

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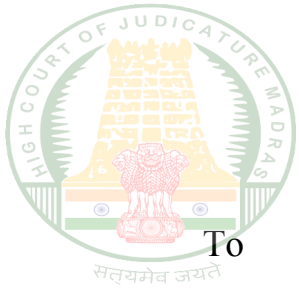
7. The petitioner is directed to deposit a sum of Rs.1,000/- each to the witnesses before the Trial Court within a period of 15 days from the date of this order. On such deposit being made by the petitioner, the Trial Court is directed to issue summon to P.W.1 to P.W.5. and by fixing a particular date, the petitioner can cross-examine the witnesses, without getting any adjournment.

8. After cross-examining the witnesses, the Trial Court may disburse the amount deposited by the petitioner to the witnesses.

9. With the abovesaid observations and directions, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

01.04.2025

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



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To

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1.The Inspector of Police,
All Women Police Station,
Kanniyakumari.

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



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P.DHANABAL,J

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