



CRL.OP(MD) No.6937 of 2025

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 17.04.2025**

**CORAM:**

**THE HONOURABLE MR.JUSTICE P.DHANABAL**

CRL. OP(MD) No.6937 of 2025

and CRL.MP(MD) No.5086 of 2025

Venkatesaperumal

... Petitioner

Vs.

The State of Tamil Nadu,  
Represented by the Inspector of Police,  
Villoor Police Station,  
Madurai District.  
Crime No. 65 of 2017

... Respondent

**PRAYER:** Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, to call for the records and set aside the order passed by the V-Additional District and Sessions Court, Madurai in Crl.M.P.No. 1894 of 2024 in S.C.No.623 of 2017 dated 20.12.2024 in respect of dismissing the petition filed by the petitioner under Section 311 of Cr.P.C for examine the P.W.11, Postmortem Doctor Tmt.Dhatchayani.

For Petitioner : Mr.A.Arputharaj

For Respondent : Mr.M.Sakthi Kumar

Government Advocate (Crl. Side)



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## **ORDER**

**WEB COPY** This petition has been filed by the petitioner to set aside the order passed by the V-Additional District and Sessions Court, Madurai in CrI.M.P.No. 1894 of 2024 in S.C.No.623 of 2017 dated 20.12.2024.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the accused in this case and he is facing trial in SC.No.623 of 2017 for the offences under Section 302 of IPC before the the V-Additional District and Sessions Court, Madurai and P.W11 was examined on 05.09.2024. On that date, since the petitioner's counsel was engaged in an another Court, he was unable to cross-examine the witness and by that time, the trial Court closed the examination of P.W11 without cross-examination. Therefore, he filed a petition to recall the P.W11 for cross-examination, but the trial Court dismissed the same on the ground that the petitioner has not cross-examined the witness purposely on the date of examination and the said behaviour of the petitioner tented the objection of the prosecutor that the petitioner purposely failed to cross-examined the witness P.W.11 and filed this petition and the case is also pending for more than 7 years without disposal. However, the trail Court also failed to consider that the petition is the first petition and no witness



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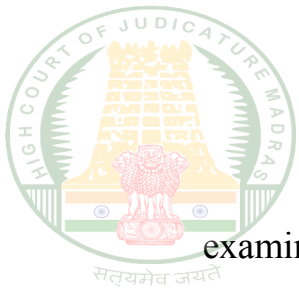
was cross-examined. Therefore, the order passed by the trial Court is

liable to be set aside.

3. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W11 was cross-examined on 05.09.2024. On that date, the petitioner failed to cross examine the witness. Thereafter, on 09.12.2024, the P.W14 was cross-examined, on that date also not cross examined. Therefore, the petitioner purposely failed to cross-examine the witness and the trial Court also after assigning the reasons, dismissed the petition. Therefore, this petition is liable to be dismissed.

4. Heard both sides and perused the records.

5. The petitioner has filed a petition before the trial Court to re-call the P.W11, Who has conducted postmortem. It is an admitted fact that P.W11 was not cross-examined on the date of chief-examination. According the petitioner, his counsel engaged in another Court thereby unable to cross-examine the witness on the date of chief examination. Though the said reason is not a valid ground for the non cross



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examination of witness, but, in order to give a fair chance and to ensure a fair trial, it is appropriate to give one more chance to the petitioner for cross-examination of witness. The trial Court also failed to consider that the petition is the first petition and P.W11 was not even cross-examined. Therefore, the order passed by the trial Court is liable to be set aside. Accordingly, this Criminal Original Petition is allowed and the order passed in CrI.M.P.No.1894 of 2024 in S.C.No.623 of 2017 dated 20.12.2024 on the file of the Vth Additional District and Sessions Court, Madurai is set aside. The petitioner is directed to deposit a sum of Rs. 1000/- [Rupees Thousand Only] before the trial Court for cost to the witness. On such deposit being made by the petitioner, the trial Court is directed to issue summon to the P.W11 by fixing a particular date and on that date, the petitioner has to cross-examine the witnesses without fail. Consequently, connected Criminal Miscellaneous Petition is closed.

**17.04.2025**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes / No  
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1. The V-Additional District and Sessions Court, Madurai
2. The Inspector of Police,  
Villoor Police Station,  
Madurai District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.



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**P.DHANABAL, J.**

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