



CRL.OP(MD) NO.7314 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL. O.P(MD) No.7314 of 2025

and

CRL M.P.(MD) No.5316 of 2025

1.Vijay

2.Vignesh

... Petitioners

Vs.

1.State of Tamil Nadu
rep.by the Inspector of Police,
Elumalai Police Station,
Madurai District.
Crime No.91 of 2019

... Respondents

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 dated 12.02.2025 in C.M.P.No.1870 of 2024 in S.C.No.470 of 2019 on the file of the learned V Additional District & Sessions Judge, Madurai.

For petitioners : Mr.J.Senthil Kumaraiah

For respondent :Mr.M.Sakthi Kumar,
Government Advocate (Crl.Side)



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ORDER

This petition is filed by the petitioners to set aside the order dated 12.02.2025 in C.M.P.No.1870 of 2024 in S.C.No.470 of 2019 on the file of the learned V Additional District & Sessions Judge, Madurai.

2. The learned counsel for the petitioners would submit that the petitioners are the accused Nos.1 and 2 in S.C.No.470 of 2019 on the file of the V Additional District and Sessions Court, Madurai and they are facing trial. In this case, already P.W.1 to P.W.4 were chief-examined on various dates. On those days, the petitioners were unable to cross-examine witnesses due to ill-health of the counsel for the petitioners. Therefore, the Trial Court closed the evidence of P.W.1 to P.W.4 and thereafter, they filed a petition to recall P.W.1 to P.W.4 on 11.12.2024. The Trial Court dismissed the same on 12.02.2025 by citing the reason that there was no material to show that the counsel on record was sick. However, the Trial Court failed to consider that the petitioners filed the petition to recall P.W.1 to P.W.4 for the first time and no witnesses were cross-examined so far. Therefore, the order passed by the Trial Court is liable to be set aside.



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3. The learned Government Advocate (Crl.Side) for the respondent would submit that P.W.1 and P.W.2 were examined on 28.07.2023 and P.W.3 and P.W.4 were examined on 01.09.2023 and the petitioner was not cross-examined the witnesses. They only filed recall petition on 11.12.2024 without any reason and the Trial Court also passed well reasoned order. Only to delay the proceedings, the petitioners have filed this petition. Hence, this petition is liable to be dismissed.

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

5. These petitioners are accused and facing trial for the offences under Sections 302 and 34 of IPC. It is admitted fact that P.W.1 and P.W. 2 were examined on 28.07.2023 and P.W.3 and P.W.4 were examined on 01.09.2023, respectively. On those days, the petitioners failed to cross-examine the witnesses by stating the reason that the counsel was not well and he was unable to cross-examine the witnesses. The Trial Court also passed the order that no records were produced to show that the counsel on record was sick on those days. Though the witnesses were chief-examined on 28.07.2023 and 01.09.2023, respectively and the petitioners filed the recall petition only on 11.12.2024, the Trial Court failed to

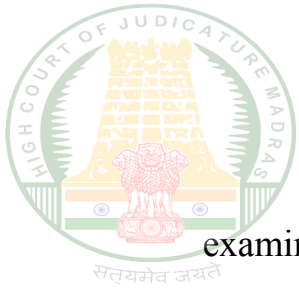


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consider that this is the first application and so far the witnesses have not been cross-examined. Though no documents were produced to show that the petitioners' counsel was unwell, considering the gravity of the offence and non-cross-examination of the witnesses, the Trial Court ought to have allowed the petition, however, dismissed the same. Hence, in order to give fair chance to the petitioners and to ensure the fair trial, it is appropriate to give one more opportunity to the petitioners for cross-examining the witnesses. Therefore, the order passed by the Trial Court is liable to be set aside.

6. In view of the same, this Criminal Original Petition is allowed by setting aside the order dated 12.02.2025 in C.M.P.No.1870 of 2024 in S.C.No.470 of 2019 passed by learned V Additional District & Sessions Judge, Madurai.

7. The petitioners are directed to deposit a sum of Rs.1,000/- each to the witnesses towards the cost for cross-examining the witnesses before the Trial Court within 15 days from the date of receipt of this order and after such deposit, the Trial Court is directed to issue summon to the witnesses by fixing date. On that date, the petitioners have to cross-



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examine the witnesses without fail.

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

22.04.2025

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

To

1.The V Additional District & Sessions Judge,
Madurai.

2.The Inspector of Police,
Elumalai Police Station,
Madurai District.

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



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P.DHANABAL,J

apd

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