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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2025

CORAM :

THE HON`BLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.12176 of 2025
and
Crl.M.P.(MD)No.9418 of 2025

Ravi ... Petitioner

Vs.

1.The Deputy Superintendent of Police,
Theni Sub Division,
Veerapandi Police Station
(Crime No.145 of 2021)

2.Vijayaraj ... Respondents

Prayer : Criminal Original Petition filed under Section 528 BNSS, to call for the records pertaining to the order dated 28.03.2025 made in Crl.M.P.No.63 of 2025 in Spl.S.C.No.34 of 2021 on the file of the Special Court for Trial of Cases under SC/ST(POA) Act, Theni and set aside the same and allow the above criminal original petition.

For Petitioner : Mr.C.Jeganathan

For R1 : Mr.A.S.Abul Kalaam Azad,
Government Advocate(Crl.side)

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ORDER

The petitioner, who is the sole accused in Spl.S.C.No.34 of 2021 on the file of the Special Court for Trial of Cases under SC/ST(POA) Act, Theni, has filed this petition to set aside the order dated 28.03.2025 made in Crl.M.P.No.63 of 2025.

2.The petitioner claims that P.W.1 and P.W.2 were examined in chief on 13.02.2025 and P.W.2 alone was cross examined on that day. Since there is no sufficient information and non-availability of the documents, P.W.1 was not cross examined and therefore, the petitioner has filed a petition under Section 348 BNSS, to recall P.W.1 for cross examination, in Crl.M.P.No.63 of 2025 and the same was dismissed by the trial Court. Challenging the same, the petitioner filed the present petition.

3.The learned counsel appearing for the petitioner submits that the petitioner's counsel has requested some document for the purpose of cross examination of P.W.1. However, those documents were not available at the time of examination of P.W.1, on 13.02.2025 and

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therefore, they could not cross examine P.W.1. Thereafter, he has filed a petition under Section 348 BNSS to recall P.W.1 for cross examination, immediately, within a period of 15 days. However, the trial Court, without considering the relevancy of the documents, at the time of cross examination, has erroneously rejected the petition filed by the petitioner.

4.The learned Government Advocate(Crl.side) appearing for the first respondent submits that the petitioner has intentionally not cross examined P.W.1, who was very much available on 13.02.2025. Two witnesses were examined on 13.02.2025 and the petitioner cross examined P.W.2, however, intentionally has not cross examined P.W.1, in order to make the witness as hostile witness. The petitioner was infact prepared to cross examine P.W.2, since he turned hostile.

5.This Court has considered the submissions made on either side and perused the available records.

6.The petitioner has filed a recall petition, on 06.03.2025, for the purpose of cross examination of P.W.1, who was examined in chief on

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13.02.2025. The contention of the petitioner is that some of the documents, based on which they want to put up defence were not available at that point of time. However, the learned Government Advocate(Crl.side) suspected the intention of the petitioner in not cross examining P.W.1 on 13.02.2025. The petitioner is facing trial for the offence under Sections 294(b), 323, 355 IPC and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities)Act, which are serious in nature. Therefore, this Court is of the view that the petitioner has to be provided one more opportunity to cross examine P.W.1, however, on cost of Rs. 5,000/-.

7.Accordingly, the impugned order in Crl.M.P.No.63 of 2025 dated 28.03.2025 is set aside and this criminal original petition is allowed. The petitioner shall file a fresh petition to recall P.W.1 and deposit a sum of Rs.5,000/- to the credit of Spl.S.C.No.34 of 2021 on the file of the Special Court for Trial of Cases under SC/ST(POA) Act, Theni, within a period of two weeks from the date of receipt of a copy of this order. The learned trial Judge shall ascertain the convenience of P.W.1 and recall him/her for the purpose of cross examination and

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the amount of Rs.5,000/- has to be paid to P.W.1 at the time of appearance. The trial Court shall also fix a date for cross examination of P.W.1. If the petitioner fails to cross examination P.W.1 on the fixed date, the trial Court shall proceed with the trial. Consequently, connected miscellaneous petition is closed.

18.07.2025

NCC : Yes/No
Index : Yes/No
Internet:Yes
gns

To

1.The Special Court for Trial of Cases under SC/ST(POA) Act,
Theni.

2.The Deputy Superintendent of Police,
Theni Sub Division,
Veerapandi Police Station

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

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