



Crl.O.P.(MD)No.11182 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.07.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.11182 of 2025

&

Crl.MP(MD)No.8409 of 2025

Raja @ Britto

... Petitioner

Vs.

1.The Deputy Superintendent of Police,
Uthamapalayam Sub Division,
Gudalur South Police Station,
Theni District.
(In Crime No.214/2017)

2.Thothan

... Respondents

Prayer: Criminal Original Petition filed under Section 528 of BNSS, to call for the records relating to the order passed in Cr.M.P No.51 of 2025 in Spl.S.C.No.108 of 2020 dated 30.04.2025 on the file of the Special Court for Trial of Cases under SC/ST (POA) Act, 1989 Theni and to set aside the same as illegal by allowing the Criminal Original Petition consequently direct the Learned Trial Court to recall the witness namely PW.3 to PW.5 for cross examination.

For Petitioner

: M/s.K.Abiya

For R1

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



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ORDER

The petitioner has filed this petition to set aside the order passed in Cr.M.P No.51 of 2025 in Spl.S.C.No.108 of 2020 dated 30.04.2025 on the file of the Special Court for Trial of Cases under SC/ST (POA) Act, 1989 Theni and to direct the trial Court to recall PW.3 to PW.5 for cross examination.

2.The petitioner is an accused in Cr.No.214 of 2017, which was registered for the offence under Sections 294(b), 506(2) IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Amendment Act, 2015. Upon completion of investigation, the respondent Police has filed the final report, which was also taken on file in Spl.S.C.No.108 of 2020 by the Special Court for Trial of Cases under SC/ST (POA) Act, 1989 Theni. The trial commenced in the year 2020 and witnesses have been examined.

3.The petitioner has filed an application in Cr.M.P No.51 of 2025 under Section 348 BNSS to recall P.W.3 to P.W.5 for the purpose of cross examination. It appears that P.W.3 was examined in chief on



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18.06.2024, P.W.4 was examined in chief on 25.09.2024 and P.W.5 was examined in chief on 04.12.2024. However, the petitioner failed to cross-examine those three witnesses during trial. Thereafter filed the above said application.

4.The petitioner has taken a plea before the trial Court that his counsel was admitted in a hospital at Madurai for treatment and therefore, he was not present at the time of examination and therefore, he must be provided one more opportunity to cross examine the witnesses. The trial Court by referring the decision of the Hon'ble Supreme Court in Akil Vs. State (NCT of Delhi) reported in (2013) 7 SCC 125 has rejected the request of the petitioner. Challenging the same, the petitioner filed the present petition.

5.The learned counsel appearing for the petitioner by referreing to the medical certificate issued by the Meenakshi Mission Hosptial, Madurai submits that his counsel was undergoing treatment during the relevant period. However, the same was disputed by the learned Government Advocate(Crl.side).



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6.Be that as it may, the petitioner is facing charges for the offence under the provisions of SC/ST Act. He has failed to cross examine P.W. 3 to P.W.5. The petitioner claims that his counsel was not available during cross examination that he was undergoing treatment. Whether it is true or not, the fact remains that the petitioner has not cross examined P.W.3 to P.W.5 and that would affect the case. Therefore, this Court is inclined to provide one more opportunity to this petitioner.

7.The trial Court has also recorded that P.W.4 is a cooli worker and P.W.5 is a mason and therefore, recalling of P.W.3 to P.W.5 will cause hardship to them. It is true that the witnesses may lose the salary for that day and it would certainly be a harassment to them to appear before the trial Court for the purpose of cross examination. Therefore, this Court is of the view that this petition may be allowed with a direction to the petitioner to pay Rs.5,000/- to each witnesses for the purpose of cross examination.

8.Accordingly, the order impugned in Cr.M.P No.51 of 2025 in Spl.S.C.No.108 of 2020 dated 30.04.2025 on the file of the Special Court for Trial of Cases under SC/ST (POA) Act, 1989 Theni is set aside and



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this criminal original petition is allowed with a direction to the petitioner to deposit a sum of Rs.15,000/- before the trial Court and file a fresh application under Section 348 BNSS. In that event, the trial Court can fix a specific date for the purpose of cross examination. The amount of Rs.15,000/- has to be paid to the witnesses as Rs.5,000/- each. In the event, if the petitioner fails to cross examine the witnesses on the date fixed by the trial Court, then the trial Court shall proceed further with the trial. Consequently, connected miscellaneous petition is closed.

03.07.2025

NCC : Yes/No

Index : Yes/No

Internet:Yes

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To

1. The Special Court for Trial of Cases
SC/ST (POA) Act, 1989
Theni District.
- 2.The Deputy Superintendent of Police,
Uthamapalayam Sub Division,
Gudalur South Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI,J

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