



Crl.O.P.(MD)No.11183 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.07.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.11183 of 2025
and
Crl.M.P.(MD)No.8408 of 2025

1.Vijayakala

2.Sasi Kumar

... Petitioners

Vs.

1.The Inspector of Police,
All Women Police Station,
Kanyakumari District.

2.J.Dephin

... Respondents

(R2 is suo motu impleaded as per orders of this Court dated 22.07.2025 in CRL.OP.(MD)No.11183 of 2025)

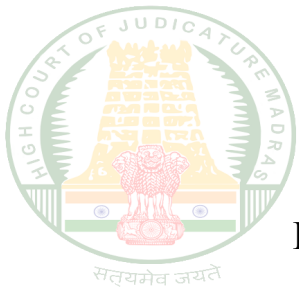
Prayer : Criminal Original Petition filed under Section 528 BNSS, to call for the records and set aside the order passed in Crl.M.P.No. 442 of 2025 in C.C.No.373 of 2018 dated 04.06.2025 on the file of the learned Judicial Magistrate (Additional Mahila) Nagercoil and to recall the witnesses namely PW1 to PW8 and PW10 for cross examination.

For Petitioner

: Mr.M.Murugan

For R1

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



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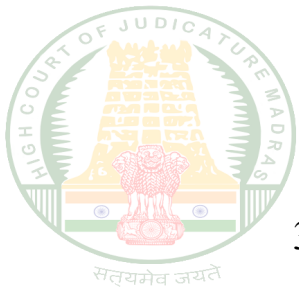
For R2

: Mr.Deenadhayan
Legal-Aid Counsel

ORDER

The petitioners, who are A4 & A5 in C.C.No.373 of 2018 on the file of the learned Judicial Magistrate (Additional Mahila) Nagercoil, have filed this petition as against the order passed by the trial Court in CrI.M.P.No.442 of 2025 dated 04.06.2025. The said petition has been filed by the petitioners under Section 348 BNSS to recall P.W.1 to P.W. 4, P.W.8 & P.W.10 for the purpose of cross examination.

2.The petitioners are facing trial before the learned Judicial Magistrate, Additional Mahila Court, Nagercoil for the offence under Sections 323, 294(b), 498(A), 406, 506(ii) IPC and Sections 3, 4 & 6 of the Dowry Prohibition Act and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. The petitioners have failed to cross examine the above witnesses and therefore, they have filed a petition in CrI.M.P.No.442 of 2025 to recall the witnesses for the purpose of cross examination.



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3.The learned counsel appearing for the petitioners submits that the

defacto complainant is none other than the wife of the first accused.

Their marriage was solemnized on 14.07.2004 as per Christian rites. A2 to A5 are in-laws of the defacto complainant. The petitioners are A4 & A5 and they have failed to cross examine the witnesses. During trial, there was a compromise arrived at between the parties and filed an application under Section 320 Cr.P.C., for compounding the offence. However, it was not processed. Believing that the issue would be compromised, the petitioners have failed to cross examine the witnesses, when they were examined in chief. He further submits that the petitioners are facing serious offences and in the event, if they are not allowed to cross examine the witnesses, then it would affect their defence.

4.The trial Court has rejected the petition by stating that the said petition has been filed at the fag end of the trial and the witnesses have been examined in chief in the year 2015, 2016 and the petitioners had several opportunities to cross examine. However, they have not cross examined and they have filed a petition to recall the witnesses after several years from the date of examination of the witnesses. The trial

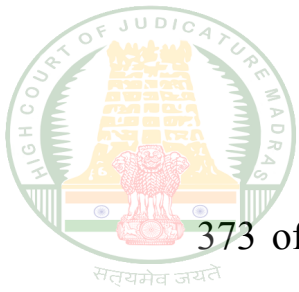


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Court found that this petition has been filed only to drag on the trial and therefore, the trial Court by its order dated 04.06.2025 has rejected the application.

5.The learned counsel appearing for the petitioners has projected that there was a compromise and therefore, they have not cross examined the witnesses. Considering this submission, this Court by its earlier order dated 22.07.2025, has *suo motu* impleaded the defacto complainant as second respondent to this petition. The defacto complainant has also appeared before this Court. However, she is not in a position to engage a counsel. Therefore, this Court appointed Mr.Deenadhayalan, learned counsel as Legal Aid Counsel to defend the defacto complainant.

6.The learned counsel for the second respondent submits that the case was registered in Cr.No.4 of 2010 for the offence under Sections 323, 294(b), 498(A), 406, 506(ii) IPC and Sections 3, 4 & 6 of the Dowry Prohibition Act and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. Final report was filed in the year 2012 and has also been taken on file. Thereafter, the case was transferred to Mahila Court, Nagercoil in the year 2018 and now pending in C.C.No.



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373 of 2018. The trial commenced in the year 2015. P.W.1 to P.W.3 were examined in chief on 31.07.2015, P.W.4 to P.W.6 were examined in chief on 15.10.2015, P.W.7 was examined in chief on 19.11.2015, P.W.8 was examined in chief on 22.12.2016, P.W.9 was examined in chief on 30.08.2018 and P.W.10 was examined in chief on 21.10.2020. Thereafter, the case was posted for questioning on 21.10.2020 and some of the accused were absconding and non-bailable warrant was issued and the same is pending. The learned counsel appearing for the second respondent has also disputed the stand taken by the petitioners that there was a compromise arrived at between the parties during trial.

7.The learned counsel appearing for the petitioners has produced the application preferred under Section 320 Cr.P.C., and contended that the defacto complainant / second respondent has agreed for the compromise and therefore, they have failed to cross examine the witnesses. The defacto complainant, who is present before this Court, has denied the same.

8.Fact remains that the said application was said to have prepared and signed on 21.12.2023, however, it has not been filed before the



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Court. There is no explanation from the learned counsel for the petitioners in not filing the application under Section 320 Cr.P.C., and there is no explanation from the petitioner for not cross examining the witnesses, who were examined in the year 2015, 2016 and 2018. The case, which has been registered in the year 2010, is pending without conclusion for the past 15 years, in view of the attitude of the petitioners. The Courts are answerable to the victims. There is no acceptable reasons from the petitioners for not cross examining the witnesses. Therefore, this Court is of the view that this petition has been filed by the petitioners only to drag on the proceedings. Hence, this Court is not inclined to entertain this petition. Accordingly, this criminal original petition is dismissed with a direction to the learned Judicial Magistrate (Additional Mahila) Nagercoil to complete the trial in C.C.No.373 of 2018, within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

23.07.2025

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To

1.The Judicial Magistrate, (Additional Mahila)
Nagercoil.

2.The Inspector of Police,
All Women Police Station,
Kanyakumari District.

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



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B.PUGALENDHI,J

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