

Crl.O.P.(MD)No.12735 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 29.07.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.OP(MD)No.12735 of 2025 and

Crl.MP(MD) No.9982 of 2025

Kannaiya @ Kannan

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. through the Inspector of Police,
Palani Chetti Patti Police Station,
Theni District.
(Crime No.162/2022).

2. Sasikumar

...Respondent

Prayer : Criminal Original Petition filed under Section 528 of BNSS, to call for the records relating to the Order passed in Crl.M.P.No. 20/2025 in S.C.No.108/2022 on the file of Learned Sessions Judge, Mahalir Neethimandram, Fast Track Mahila Court, Theni dated 20.06.2025 and set aside the same and to direct the learned Trial Judge to permit the petitioner to recall PW1 to 4 for cross-examination within a time frame as fixed by this Hon'ble Court.



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For Petitioner : Mr. N.Anandha Padmanabhan
Senior Counsel
For R1 : Mr.A.S.Abul Kalaam Azad,
Government Advocate (Crl.Side)

ORDER

The petitioner/sole accused in S.C.No.108 of 2022, on the file of the learned Sessions Judge, Mahila Court, Theni has filed this petition as against the order passed by the learned Sessions Judge in Cr.MP.No.20 of 2025 in S.C.No.108 of 2022.

2.The petitioner is facing a trial before the Mahila Court, for the offence under Section 302 IPC. The trial commenced on 13.03.2025. PW 1 and PW 2 were examined in chief. However, this petitioner has failed to cross examine PWs 1 & 2, who were very much available before the Court. Thereafter, the case was adjourned to 27.03.2025 and on that date, PW 3 & PW 4 were examined in chief. The petitioner has also failed to cross examine PWs 3 and 4 on 27.03.2025. Thereafter, this petitioner has filed an application, under Section 348 of BNSS(311 of Cr.P.C), to recall PWs1 to 4, for the purpose of cross examination, on the ground that the counsel on record



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was not well on the date, when the witnesses were examined in chief.

However, the trial Court has rejected that application of this petitioner that though the petitioner and his counsel were very much available on the date, when PWs 1 to PW 4 were examined in chief, they failed to cross examine the witnesses on that date. The trial Court has also considered the plight of the witnesses that PW 1 and 2 are coolie workers and PW 3 is a woman and PW 4 is an ex-serviceman and therefore refused to entertain the application filed by this petitioner, under Section 348 of BNSS and therefore this petitioner is before this Court.

3.The learned counsel appearing for the petitioner submits that it is true that the petitioner's Counsel was present on 13.03.2025 when PW 1 and PW 2 were examined in chief. However, he don't want to divulge the defence by cross examining PWs1 & 2, in the absence of PWs 3 and 4. Therefore he wanted to cross examine all the four witnesses in a single day, i.e, on the next date of hearing on 27.03.2025. Unfortunately, on 27.03.2025, he was not well and therefore, he failed to cross examine the witnesses, though they were



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available. He also pointed out that it is not an intentional one and he has immediately filed an application on 09.04.2025, to recall the witnesses PWs 1 to 4. The learned senior counsel has also pointed out that apart from the witnesses Pws 1 to 4, he has cross examined all other witnesses produced by the prosecution. He also pointed out that since the petitioner is facing the major offence under Section 302 IPC, in the event, if the main witnesses PW 1 to PW 4 are not cross examined then he would be greatly prejudiced.

4.Mr.A.S.Abul Kalaam Azad, learned Government Advocate (Crl.Side), by referring to the orders of the learned Sessions Judge submits that the petitioner along with his Counsel were very much available in the Court at the time of chief examination of PWs 1 to 4. However, they have intentionally failed to cross examine in order to influence the witnesses and to make them hostile. In the event, if an opportunity is provided to the petitioner to cross examine Pws 1 to 4, the petitioner may influence the witnesses and it may affect the case of the prosecution.

5. This Court considered the rival submissions made and



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also perused the materials placed on record.

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6.The petitioner has filed an application to recall PWs 1 to 4 for the purpose of cross-examination. PWs1 & 2 were examined in chief on 13.03.2025 and PWs 3 and 4 were examined in chief on 27.03.2025. The application to recall the above witnesses has been filed by the petitioner on 09.04.2025, without much delay. The reasonings given by the petitioner counsel for not examining the witnesses on the date of their chief examination is that in order to examine all the witnesses in a single day, they have not cross examined PWs1 and 2, when they were examined in chief on 13.03.2025. However, due to ill health of the learned counsel, they have not cross examined PWs3 & 4, when they were available on 27.03.2025. Admittedly, this petitioner is facing trial for the major offence under Section 302 IPC. In the event, if this petitioner is not provided with an opportunity to cross examine the witnesses, then it would certainly affect the case of the petitioner. Therefore, this Court is of the view that the petitioner has to be provided an opportunity. At the same time, this Court is also taking into consideration of the reasonings given by the trial Court that the



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witnesses PWs 1 and 2 are Coolie workers, PW 3 is a woman and PWD 4 is an Ex-serviceman. This Court is also answerable to the victims. If they are called repeatedly for the purpose of cross examination, it would amount to harassment. Therefore, this Court, while allowing this petition, is also inclined to impose cost of Rs.2,500/- each to all the witnesses.

7. Accordingly, the impugned order in Crl.M.P.No.20/2025 in S.C.No.108/2022, dated 20.06.2025 passed by the learned Sessions Judge, Mahalir Neethimandram, Fast Track Mahila Court, Theni is set aside. This Criminal Original Petition is allowed with the following directions:-

- i. The petitioner shall file an application along with a cost of Rs.10,000/-, which has to be paid to the witnesses PWs1 to 4 as Rs.2,500/- each.
- ii. On such application along with the payment, the trial Court is directed to entertain the application and fix a specific date for



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cross-examination of all the witnesses in a single day, after considering the convenience of the witnesses as well as the counsel for the petitioner.

iii. The petitioner has to cross examine the witnesses on the day specified by the learned Judge, without fail.

iv. In the event, if this petitioner fails to cross examine the witnesses on the date specified by the learned Judge, no further opportunity would be provided to him. The amount, which has been deposited by the petitioner has to be given to the witnesses on the date of their cross-examination.

Consequently, connected Miscellaneous petition is closed.

29.07.2025

NCC : Yes/No

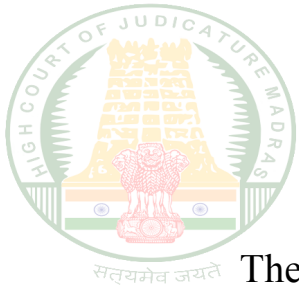
Index : Yes/No

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To

1. Mahalir Neethimandram, Fast Track Mahila Court, Theni

2. The Inspector of Police,
Palani Chetti Patti Police Station,



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Theni District.
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B.PUGALENDHI,J

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