

CrI.O.P.(MD)No.13203 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CrI.OP(MD)No.13203 of 2025
and
CrI.M.P.(MD)No.10435 of 2025

1. Dr.O.Kannappan
2. Partheesh
3. Rajesh Kannan
4. Swaminathan
5. Manimaran
6. Ranjithkumar
7. Karthick Kannan
8. Krishnan
9. Abbash

... Petitioners

versus

The State of Tamil Nadu, rep. by
The Deputy Superintendent of Police,
Theni.

...Respondent

Prayer : Criminal Original Petition filed under Section 528 of BNSS, to call for the records pertaining to the order dated 13.02.2025 passed in Cr.M.P.No.23 of 2025 in Spl.S.C.No.5 of 2020 on the file of the Special Court for Trial of Cases under SC/ST (POA) Act, Theni and to set aside the same and allow the above petition for recalling of witness for the interest of justice and equity.



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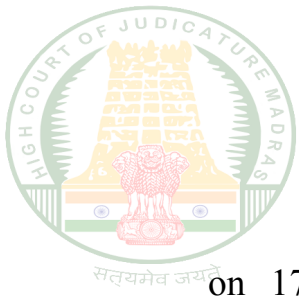
CrI.O.P.(MD)No.13203 of 2025

For Petitioners : Mr.R.R.Thamothar Raj
For Respondent : Mr.A.S.Abul Kalaam Azad,
Government Advocate (CrI. Side)

ORDER

The petitioners are accused Nos.1 to 4, 6, 8 to 11 in Spl.S.C.No.5 of 2020 on the file of the Special Court for Trial of Cases under SC/ST (POA) Act, Theni. They have moved this petition challenging the order passed by the trial Court in Cr.M.P.No.23 of 2025 dated 13.02.2025.

2. The petitioners are facing trial before the Special Court for Trial of Cases under SC/ST (POA) Act, Theni, for the offences under Sections 147, 148, 449, 294(b), 506(ii) IPC r/w. Sections 3(i)(v) and 3(i)(x) of SC/ST Act (Prevention of Atrocity) Act, 1989. The case in Crime No.24 of 2012 was registered in the year 2012 and final report was filed in the year 2020. The trial in Spl.S.C.No.5 of 2020 commenced on 04.12.2024. On that day, P.W.1 and P.W.2 were examined by the prosecution. However, the petitioners have not cross examined the witnesses stating that their counsel was not present due to his ill-health. Thereafter, P.W.3 was examined on 16.03.2022, P.W.4 was examined on 20.04.2022, and P.W.5 and P.W.6 were examined on 14.08.2024. P.W.7 was examined on 22.10.2024 and P.W.8 was examined



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on 17.02.2024. However, none of these witnesses have been cross examined by the petitioners. Thereafter, the petitioners, by changing a new counsel, have filed an application in Cr.M.P.No.23 of 2025 under Section 348 of BNSS on 10.01.2025 to recall P.W.1 to P.W.8 for the purpose of cross examination. The said application was dismissed by the trial Court, by its order dated 13.02.2025. Challenging the same, the petitioners have filed this petition.

3. The learned counsel appearing for the petitioners submit that the previous counsel for the petitioners has failed to cross examine the witnesses, who are available for cross examination, due to his ill-health. The present counsel was engaged before this Court on the dates of examination in chief. Therefore, the prosecution witnesses have not been cross examined. If the petitioners are not provided with an opportunity, then, it would affect the defence of the petitioners.

4. Mr.A.S.Abul Kalaam Azad, learned Government Advocate (Crl. Side) takes notice for the respondent Police and submits that the petitioners have deliberately delayed the process of trial by not cross examining the witnesses. The learned Government Advocate further submits that the



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witnesses have been examined on various dates from 04.12.2021 to 17.02.2024. The petitioners have not cross examined any of the witnesses and they have preferred to file an application in Cr.M.P.No.23 of 2025 to recall P.W.1 to P.W.8 only on 10.01.2025 when the prosecution was about to be closed. The petitioners, by not cross examining the witnesses, have been dragging the proceedings from the year 2021 to 2024. The learned Government Advocate has also pointed out that the trial Court has dismissed the application on 13.02.2025, however, the present petition has been filed before this Court only on 01.08.2025. Therefore, according to the learned Government Advocate, this is intentionally made only to drag on the proceedings and the petitioners do not deserve any sympathy.

4. This Court considered the rival submissions.

5. The petitioners are Secretary, Lecturers and Staffs of a Private Engineering College. The occurrence had taken place on 25.12.2011. But, the FIR was registered in the year 2012 only after the direction of the learned Judicial Magistrate and final report was filed in the year 2020 and trial commenced in the month of December 2021.



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6. As rightly pointed out by the learned Government Advocate (CrI. Side), the petitioners have not examined any witnesses right from 04.12.2021 till 17.02.2024. This Court has also noticed the manner in which the present petition to set aside the order passed by the trial Court in Cr.M.P.No.23 of 2025 dated 13.02.2025 is challenged only after a period of six months.

7. Since the petitioners have intentionally evaded the trial proceedings for the reasons best known to them, this Court is not inclined to entertain this petition. However, considering the offence, for which, the petitioners are facing trial before the Special Court and in the event if the petitioners are not provided with an opportunity to cross examine the witnesses, then, it would certainly affect the defence of the petitioner before the trial Court. Therefore, this Court is inclined to provide one opportunity to the petitioners.

8. Accordingly, this Criminal Original Petition is allowed and the order dated 13.02.2025 passed in Cr.M.P.No.23 of 2025 in Spl.S.C.No.5 of 2020 on the file of the Special Court for Trial of Cases under SC/ST (POA) Act is set aside with the following directions:



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(i) The petitioners shall file a fresh application under Section 348 of BNSS before the trial Court within a period of **one week from today** along with a demand draft for a sum of Rs.1,00,000/- (Rupees one lakh only).

(ii) The trial Court shall pay a sum of Rs.10,000/- (Rupees ten thousand) to the witnesses, namely, P.W.1 to P.W.8 and retain the remaining amount of Rs.20,000/- for the welfare activities in the Special Court.

(iii) The trial Court shall find out the convenience of the witnesses and also convey the order passed by this Court imposing a cost of Rs.10,000/- (Rupees ten thousand only) and fix a date for examination of the witnesses in a particular day. The date may also be informed to the petitioners' counsel in advance.

(iv) The petitioners have to cross examine all the witnesses, who are available for examination on a particular day without fail.

(v) In the event, if the petitioners fail to cross examine the witnesses on the date fixed by the trial Court, then, the trial Court shall proceed with the case further and dispose of the case as expeditiously as possible.

(vi) The petitioners shall not take any further adjournment in this case and co-operate for trial.

(vii) The Court is not meant for the accused alone and the Court is also answerable to the victims also. The victim, who set the law in motion



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in the year 2011, has not seen the result for the past 14 years and the same has to be considered by the trial Court while granting any further adjournment in this case.

Consequently, connected miscellaneous petition is closed.

07.08.2025

NCC : Yes/No

Index : Yes/No

Internet: Yes

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Note: Issue order copy on or before 08.08.2025

To

1. The Special Court for Trial of Cases
under SC/ST (POA) Act,
Theni.
2. The Deputy Superintendent of Police,
Theni.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

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