



Crl.O.P.(MD) No.14403 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2025

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.(MD) No.14403 of 2025

Ansar Ali @ Asaravalli

... Petitioner

Vs.

State of Tamil Nadu rep. by
Sub-Inspector of Police,
Sawyerpuram Police Station,
Thoothukudi.
Crime No.74 of 2014.

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to call for the records pertaining to the impugned order dated 12.02.2025 in Cr.M.P.No.22730 of 2024 passed by the learned Judicial Magistrate No.I, Thoothukudi, Thoothukudi District and to set aside the same as illegal and consequently to direct the learned Judicial Magistrate No.I, Thoothukudi, Thoothukudi District to allow the petition filed under Section 311 of Cr.P.C. to recall the P.W.1 to P.W.4 for cross-examination on behalf of the petitioner.

For Petitioner : Mr.V.Rajiv Rufus

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been filed to set aside the impugned order dated 12.02.2025 passed by the learned Judicial Magistrate No.I, Thoothukudi District, in Cr.M.P. No.22730 of 2024.

2. In the said Cr.M.P.No.22730 of 2024, the petitioner sought for recall of P.W.1 to P.W.4, as they could not be cross-examined on the date of their chief examination i.e., P.W.1 on 18.05.2017, P.W.2 on 03.10.2018, P.W.3 on 03.10.2018 and P.W.4 on 26.07.2022.

3. The learned Judicial Magistrate had dismissed the petition filed by the petitioner holding that the conduct of the petitioner in filing the petition to recall P.W.1 to P.W.4 was only to delay and defeat the proceedings; that though sufficient opportunities were given to the petitioner in the years 2017, 2018, and 2022 for cross-examination, the petitioner did not avail the same; that seeking permission to cross-examine six years after the examination-in-chief cannot be allowed, as it would cause inconvenience to the defacto complainant.

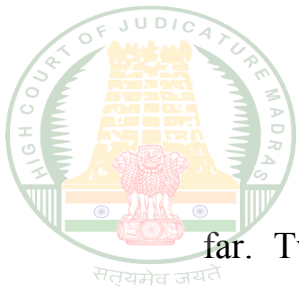


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4. The learned counsel for the petitioner would submit that since the prosecution has not closed its evidence so far, the petitioner cannot be said to be guilty of delaying the trial proceedings; that recalling these witnesses would not delay the trial; and that the petitioner is willing to abide by any conditions that may be imposed by this Court for recalling P.W.1 to P.W.4 for the purpose of cross-examination.

5. The learned Additional Public Prosecutor for the respondent, per contra, would submit that the co-accused, viz., one Sekar/A2, had filed a similar petition, which was dismissed by the learned Judicial Magistrate, and thereafter filed Crl.O.P.(MD) No.11375 of 2025 before this Court seeking to set aside the said order; that the said Crl.O.P. was dismissed by this Court on the ground that there was no justifiable reason for the petitioner therein to recall the witnesses after six long years, and that due to passage of time and loss of memory, discrepancies might arise in the evidence, which the petitioner therein could take advantage of; and that this Court is bound by its earlier order.

6. Though the prosecution had examined P.W.1 to P.W.4 on the dates mentioned above, it is seen that the evidence has not been closed so



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far. Two more witnesses are yet to be examined on the side of the prosecution. However, this fact was not brought to the notice of this Court while deciding Crl.O.P. (MD) No.11375 of 2025. Therefore, this Court is of the view that the delay in disposing of the case cannot be attributed only to the petitioner.

7. Considering the fact that the prosecution has not closed the evidence so far and that the petitioner has not cross-examined the witnesses, this Court is of the view that one more opportunity can be granted to the petitioner, subject to the terms and conditions that may be fixed by the learned Judicial Magistrate. The right to cross-examine the accused also cannot be curtailed. At the same time, the conduct of the petitioner in filing the application for cross-examination of these witnesses after six years also cannot be appreciated. In fact, this Court had earlier observed in the petition filed by A2 that, due to the passage of time, the witnesses could lose their memory and there may be discrepancies in their evidence, which the petitioner may take advantage of. It is needless to say that while appreciating the evidence of the witness, all the above facts would be taken into account by the learned Magistrate.



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8. For all the above reasons, the impugned order is set aside, with liberty to the petitioner to approach the learned Judicial Magistrate once again seeking the remedy as prayed for. The learned Judicial Magistrate may consider the petitioner's prayer on such terms and conditions as may be imposed.

9. With the above liberty, this Criminal Original Petition is disposed of.

15.09.2025

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order / Non-Speaking Order

Copy To:

- 1.The Judicial Magistrate No.I,
Thoothukudi, Thoothukudi District.
- 2.The Sub-Inspector of Police,
Sawyerpuram Police Station,
Thoothukudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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