



Crl.O.P.(MD)No.13883 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.08.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.OP(MD)No.13883 of 2025

A.Ponvasanth

... Petitioner

Vs

The State of Tamil Nadu,
Rep. by the Inspector of Police,
Elairampannai Police Station,
Crime No.91 of 2015,
Virudhunagar.

...Respondent

Prayer : Criminal Original Petition filed under Section 528 of BNSS, to call for the records and to set aside the order passed by the Additional District and Sessions Judge, Srivilliputhur in Cr.MP.No. 2217 of 2025 in SC No.131 of 2017, dated 30.07.2025.

For Petitioners : Mr.R.Rajamohan

For Respondent : Mr.A.S.Abul Kalaam Azad

Government Advocate (Crl. Side)

ORDER

The petitioner/A1 in SC No.131 of 2017, on the file of the Additional District Sessions Court, Srivilliputhur has filed this petition challenging the order passed by the trial Court in Cr.MP No.2217 of 2025, dated 30.07.2025.



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2.The petitioner is facing trial before the learned Additional District Sessions Court, Srivilliputhur, for the offence under Sections 302 IPC r/w 109 IPC. PW 1 and PW 2 are the eyewitnesses and they have been examined in chief on 26.09.2023. However, the petitioner has failed to cross examine the witnesses on the date of their chief examination. Thereafter he filed an application to recall PW 1 and PW 2 and the same was allowed by the trial Court and he has cross examined PW 1 and PW 2 on 18.06.2024. The prosecution was completed on 23.04.2025 and the case was posted for defence on 04.06.2025. In the meantime, the petitioner has absconded from 06.11.2024 till 02.02.2025. When the case was posted for arguments, the petitioner has filed an application in Cr.Mp No.2217 of 2025, under Section 311 Cr..P.C, to recall PW 1 and PW 2 once again for the purpose of cross examination and that was allowed by the trial Court on 17.07.2025, with a direction to pay a cost of Rs.1,500/- to PW1 and PW 2. Since the petitioner has not complied with the condition, Cr.MP.No.2217 of 2025 was dismissed by the trial Court, by its order, dated 30.07.2025, which is under challenge in this petition.



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3.The learned counsel appearing for the petitioner submits that the cross examination of the witnesses PW 1 and PW 2 is the indefeasible right of the accused and it cannot be dismissed merely because of non-payment of cost. He further submits that an opportunity has to be provided to this petitioner in order to rebut the prosecution case.

4.Mr.A.S.Abul Kalaam Azad, learned Government Advocate (Crl. Side), who takes notice for the respondent submits that in fact, the petition filed by the petitioner to recall PW 1 and PW 2 for cross examination was ordered even on 18.06.2024 itself, Thereafter, the petitioner has moved an application for cross-examination of PW 1 and PW 2, in the month of June 2025. However, it was allowed on condition that the petitioner has to pay a cost of Rs.1500/- each to the witnesses. Since the petitioner has failed to adhere the condition imposed by the trial Court, the petition was dismissed. Therefore, the claim of the petitioner that he has been denied the opportunity of cross examination of witnesses PW 1 and PW 2 cannot be accepted, when he got an opportunity twice for cross examination of witnesses.



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5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The petitioner, who is facing a criminal case in SC No. 131 of 2017 for the offence under Sections 302 IPC r/w 109 IPC before the Additional District Sessions Court, Srivilliputhur has filed an application to cross examine the witnesses PW 1 and PW 2, as he has failed to cross examine them, when they were examined in chief on 26.09.2023. It is to be noted that after seven months of their cross examination, the petitioner has moved an application to recall PW 1 and PW 2 and the same was allowed and the petitioner was provided with an opportunity to cross examine PW 1 and PW 2. The cross examination was completed by the petitioner on 18.06.2024 itself. Thereafter, when the case was posted at the stage of arguments, the petitioner has filed another application to recall PW 1 and PW 2 for the purpose of cross examination and the same was also allowed by the trial Court with cost of Rs.1,500/-. The cost imposed by the trial Court is very meagre. Even then, he failed to adhere the order of the trial Court. This Court is of the view that the learned trial Judge ought not to have entertained that application, when the petitioner has already cross



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examined PWs 1 and 2 on 18.06.2024 itself. This petitioner has failed to utilize the opportunity provided by the trial court for the second time to cross examine PW 1 and PW 2. Therefore, the trial Court has dismissed the application. This Court does not find any infirmity in the order passed by the trial Court.

7. Accordingly, this Criminal Original Petition is dismissed.

21.08.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes
vrn

To

The Inspector of Police,
Elairampannai Police Station,
Crime No.91 of 2015,
Virudhunagar.



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B.PUGALENDHI, J.

vrn

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