

CRL.OP(MD) No.1563 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL.O.P(MD) No.1563 of 2025

and

CrI.M.P(MD) No.1068 of 2025

Alagarsamy @ Raja

..Petitioner

.vs.

The Deputy Superintendent of Police
Economic Offences Wing -II
Dindigul
(i/c) Virudhunagar District

...Respondent

PRAYER: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 to direct the Special Court under the TANPID Act Cases, Madurai to treat the statement of witnesses recorded under Section 244 of Cr.P.C., as evidence of the prosecution witnesses in C.C.No. 8 of 2015 pending on the file of the learned Judge.

For petitioner :Mr.R.Anand
for Mr.S.Ashok

For Respondent : Mr. M.Sakthi Kumar
Government Advocate (Crl side)



CRL.OP(MD) No.1563 of 2025

ORDER

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This Criminal Original Petition has been filed to direct the Special Court under TANPID Act Cases Madurai to treat the statement of witnesses recorded under Section 244 of Cr.P.C., as evidence of the prosecution witnesses in C.C. No.8 of 2015 on the file of the Special Court.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the second accused in this case and based on the complaint lodged by the defacto complainant a case has been registered in Crime No. 2 of 2023 for the offences under Sections 406,420,120(B), 506(i) of IPC and Section 5 of TNPID Act. Thereafter the respondent conducted investigation and filed final report and the same is pending in C.C. No. 8 of 2015. During the pendency of the case some of the victims have compromised and the accused have settled the amount to 168 depositors after taking cognizance. At the time of trial he had settled 168 depositors. After the first phase settlement when the petitioner was about to commence the settlement to the remaining depositors the learned trial Judge has informed that since the recording of evidence in the present



CRL.OP(MD) No.1563 of 2025

case was found to be made before the framing of charges upon the accused persons those depositors cannot be relied on by either of the parties and the same cannot be acted upon. By saying so, the learned Special Judge has proceeded to put the accused persons notice about the charges indicated in the final report and those were read over and signatures were obtained from each accused persons. Thereafter the learned Judge once again issued summons to the prosecution witnesses who have already been examined in chief and cross. Though the witnesses have already been examined and informed the learned Judge the Court was on misconception of law that the depositors who have been settled before the lok Adalat need not to be called and their examination is not warranted whereas the depositors who have been examined in the Court previously as their examination has been prior to framing of charges, they have to be necessarily brought back to the Court for recording evidence afresh. Therefore the above act of the learned Magistrate is illegal and therefore the petitioner has approached this Court by way of this petition.

3. The learned Government Advocate(Crl.Side) appearing for the respondent would submit that on the date of issuance of summons to the

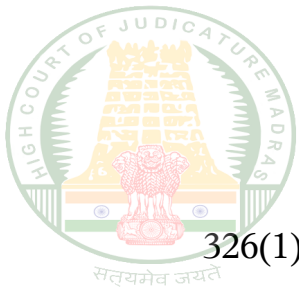


CRL.OP(MD) No.1563 of 2025

witnesses already around 49 witnesses have been examined before framing of charges and the trial court also issued summons to the witnesses listed in the charge sheet, therefore it is for the trial Court to decide who have to be examined as witnesses and the accused have no role in issuing summons to the witnesses, therefore the petition is liable to be dismissed.

4. Heard both sides and perused the materials available on record.

5. On perusal of records it is seen that trial Court had examined witnesses P.W.1 to P.W.49 on various dates before framing of charges. In this case charges have been framed on 19.07.2023 and thereafter the trial court has issued summons to all the witnesses. According to the petitioner already all the witnesses were examined before the trial Court and therefore once again they need not be examined. It is admitted that the statement of the witnesses were recorded before framing of charges in so far as the deposit amounts settled persons are concerned. However after framing of charges the trial court has issued summons to the witnesses since the statement were recorded prior to framing of charges. It is for the trial Court to decide who are all to be called as witnesses. As per Section



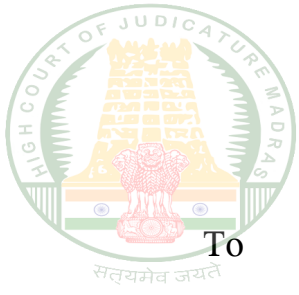
CRL.OP(MD) No.1563 of 2025

326(1) of Cr.P.C. proviso it is for the trial Court to decide whether after examination of witnesses whose evidence has already been recorded is necessary and in the interest of justice the trial Court may resummon any such witness. While so there is no any illegality in issuing summons to the witnesses. However the trial Court need not issue summons to the witnesses against whom already they received amount and settled the matter amicably Therefore for the persons whom money not settled may be called as witnesses and based on the same, the trial court can proceed. However if the examination of any witnesses is absolutely necessary then the trial Court can issue summon to that witnesses in accordance with law.

6. With the above observation the Criminal Original Petition stands dismissed. Consequently connected miscellaneous petition stands closed.

30.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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CRL.OP(MD) No.1563 of 2025

To

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1. The Special Court under TANPID Act Cases Madurai
2. The Deputy Superintendent of Police
Economic Offences Wing -II
Dindigul
(i/c) Virudhunagar District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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CRL.OP(MD) No.1563 of 2025

P.DHANABAL,J

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Crl.OP(MD) No.1563 of 2025

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