



CRL OP(MD). No.15712 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 25/09/2025

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CRL OP(MD). No.15712 of 2025

Thirukumaran

... Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its the Deputy Superintendent of Police,
Theni Sub Division,
Theni District..

2.The Inspector of Police,
Theni Police Station,
Theni District.
Crime No.21 of 2018.

... Respondents

Prayer : Criminal Original Petition filed under Section 528 of BNSS, to call for the records pertaining to the order in Cr.MP.No.186 of 2025 in Spl.SC.No.115 of 2020 dated 02.09.2025 on the file of the Special Court for Trial of Cases under SC/ST Act,Theni and set aside the same.

For Petitioner : Mr.J.Yogeswaran

For Respondents : Mr.K.Sanjai Gandhi,
Government Advocate (Crl.Side)



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ORDER

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The petitioner seeks to set aside the impugned order in Cr.M.P.No.186 of 2025 in Spl.S.C.No.115 of 2020, dated 02.09.2025, on the file of the learned Special Judge for Trial of Cases under SC/ST Act, Theni, dismissing the petitioner's application for the recall of P.W1, P.W2 and P.W19 for cross-examination.

2.The petitioner sought for recall of the witnesses on the grounds that the 164 Cr.P.C statements of P.W1, P.W2 were not marked through them and P.W1 and P.W2 have to be confronted with their 164 Cr.P.C statements and contradictions have to be elicited and P.W19, the Investigation Officer also had to be cross examined.

3.The prosecution opposed the said prayer stating that it would delay the proceedings.

4.The learned Session Judge dismissed the said application stating that the petitioner is facing trial for the offences under Sections 302, 364(2) of IPC and 3(2)(v) of SC/ST (POA) Act, which is pending for five



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years and that 164 Cr.P.C statement is not substantive evidence and therefore, cross examination relating to 164 Cr.P.C statements of P.W1 and P.W2 is not necessary.

5.The learned counsel for the petitioner would submit that the reasons for dismissal cannot be sustained; that the 164 Cr.P.C statements of the witnesses were not marked through P.W1 and P.W2; that therefore, the petitioner could not elicit the contradictions and if the petitioner is not permitted to elicit the contradictions, he would be put to loss and hardship.

6.The learned Additional Public Prosecutor appearing for the respondent police would submit that P.W19 was examined on 31.07.2025 and although the petitioner's counsel was present, he had not cross-examined P.W19. He would further submit that P.W1 and P.W2 were already cross-examined by the petitioner and the instant petition is only to delay the trial.

7.It is not in dispute that P.W1 and P.W2 have already



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been cross-examined by the petitioner. It is also not in dispute that 164 Cr.P.C statements of the witnesses, namely, P.W1 and P.W2 were not marked through them and those statements were marked through P.W.19. Therefore, this Court is of the view that the petitioner is justified in seeking the recall of the witnesses to confront them with their 164 Cr.P.C statements. The reason assigned by the learned Sessions Judge that 164 Cr.P.C statement is not substantive evidence and therefore, cross- examination is not necessary, is flawed. There is no doubt that 164 Cr.P.C statement of the witnesses is not substantive evidence. However, the said statement can be used for corroboration and contradiction and the petitioner, therefore, has to elicit the contradictions if any from the witnesses. Though the trial is pending for five years, it is seen that P.W19 was examined by the prosecution only on 31.07.2025 and the delay therefore cannot be attributed to the petitioner.

8.For all the above reasons, this Court is of the view that no delay would be caused to the trial by recalling P.W1, P.W2 and P.W19. Hence, the impugned order dated 02.09.2025 is set aside with the following directions:-



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(i) The petitioners shall cross examine P.W1, P.W2 and P.W19 on the same day fixed by the trial Court, on payment of a cost of Rs.1,000/- each to the three witnesses.

(ii) If the petitioner fails to comply with the above directions, the order passed by this Court shall stand vacated without reference to this Court.

9. With the above direction, this Criminal Original Petition is allowed.

25.09.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

1. The Special Court for Trial of Cases under SC/ST Act,
Theni.

2. The Deputy Superintendent of Police,
Theni Sub Division,
Theni District.

3. The Inspector of Police,
Theni Police Station,
Theni District.



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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER
IN
CRL OP(MD) No.15712 of 2025

Date : 25/09/2025