



CRL O.P.(MD) No.21484 of 2024

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IN THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.04.2025

Pronounced on: 21.07.2025

CORAM

The Hon`ble Mr.Justice P.DHANABAL

CRL OP.(MD) No.21484 of 2024
and Crl. M.P. (MD) No.13312 of 2024

D.B. Senthil Kumar S/o. D. Balasundaram .. Petitioner /
third party / Defacto complainant.
Vs.

1. State represented by:

The Inspector of Police,
Thanjavur Medical College Police Station,
Thanjavur District.
[Cr. No.55 of 2013]

.. 1st Respondent / Petitioner /
Complainant.

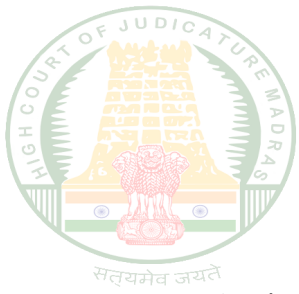
2. Ramesh S/o. Sundaravel

3. Kumar S/o. Sundaravel

4. Sitrarasu S/o. Ariyapoo

5. Rajendran S/o. Rangan .. 2 to 5 respondents /
Respondents 1 to 4 / Accused 1 to 4.

PRAYER: - The Criminal Original Petition has been filed under Section
528 of B.N.S.S. calling for records of the order in Crl. M.P. No.5 of 2024
in S.C. No.98 of 2023 dated 08.11.2024 passed by the learned Additional



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Assistant Sessions Judge, Pudukottai and set aside the same as illegal and allow the petition filed under Section 348 of B.N.S.S. in Crl. M.P. No.5 of 2024.

For Petitioner : Mr.C. Arul Vadivel @ Sekar,
Senior Counsel
For Mr. O.R. Gokul Abimanyu

For Respondents : Mr. M. Vaikkam Karunanithi,
Government Advocate (Criminal side)
[for R1]
Mr. Paraloga Vignesh
[for R2 to R5]

ORDER

This Criminal Original Petition has been filed as against the order passed by the learned Additional Assistant Sessions Judge, Pudukottai in Crl. M.P. No.5 of 2024 in S.C. No.98 of 2023 dated 08.11.2024, wherein, the 1st respondent herein has filed a petition before the trial Court to recall PW6, PW8 and PW9 for further examination under Section 311 of Cr.P.C. and the same was dismissed. Aggrieved by the said order, the present petition has been filed by the defacto complainant, who is not a party to the said petition.



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2. The learned Senior Counsel appearing for the petitioner would submit that the petitioner is the defacto complainant and based on his complaint, the 1st respondent has registered a case as against the respondents 2 to 5 in Cr. No.55 of 2013 for the offences under Sections 294(b), 341, 324, 506(ii) of IPC read with Section 3(1) of TNPPDL Act. Thereafter, the 1st respondent filed a final report after elaborate investigation and the case was committed to the Sessions Court by the jurisdictional Magistrate and thereafter, the Sessions Court made over the case to the Additional Assistant Sessions Judge, Pudukottai in S.C. No. 98 of 2023. Thereafter, the trial Court examined the witnesses. On the side of the prosecution, PW1 to PW12 were examined. However, the Additional Public Prosecutor has not conducted the trial in a proper manner and failed to mark the crucial exhibits such as the Accident Registers of the injured witnesses, Motor Vehicle Inspection Report, photograph of the damaged property and the bills for repairing the damaged properties. Therefore, the learned Additional Public Prosecutor appeared bias in favour of the accused. Therefore, the petitioner submitted a representation dated 11.11.2024 to the District Collector



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requesting appointment of Special Public Prosecutor to ensure a fair trial and the said representation was not considered.

2.1. Thereafter, the 1st respondent / Investigation Officer filed a petition under Section 348 of B.N.S.S. in Crl. M.P. No.5 of 2024 seeking to recall LW7, LW13 and LW14 for the purpose of marking material objects and exhibits. But the trial Court, without proper application of mind, solely citing direction for a speedy disposal, dismissed the petition through an order dated 08.11.2024. The object of Section 348 of B.N.S.S. is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. But in this case, the prosecution has committed mistake of not marking crucial evidence and therefore, the said witnesses have to be recalled. The Trial Court, without considering the same, erroneously dismissed the petition. Against which, the petitioner, being the defacto complainant, preferred this Criminal Original Petition and also a Writ petition in W.P. No.29514 of 2024 for appointment of Special Public Prosecutor for this



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case. At the time of admission, this Court on 09.12.2024, granted stay from passing judgment alone and the trial proceedings shall go on. The above stay was communicated to the Court through a memo on 18.12.2024 and the same was recorded in the case proceedings. In spite of that, the trial Court passed judgment on 03.01.2025. Since there was a stay granted by this Court, the subsequent order passed by the trial Court is against law and the same is non-est in the eye of law. Therefore, the order passed by the trial Court in Crl. M.P. No.5 of 2024 and the subsequent judgment pronounced by the trial Court ignoring the stay granted by this Court are liable to be set aside.

2.2. In support of his contention, the learned Senior counsel has relied upon the following judgments:-

(i) Ram Samujh vs. State and others in Crl. Revision No.1513 of 1960.

(ii) *Manohar Lal (Dead) by LRS vs. Ugrasen (Dead) by LRs and others with Ghaziabad Development Authority vs. Ugrasen (Dead) by LRs and others reported in (2010) 11 SCC 557.*

(iii) *Salwinder Singh vs. State of Punjab and others in*



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CRM-27982-83-2019 in CRM-M-41639-2014 (O & M)

(iv) Prabhu Chawla vs. State of Rajasthan and another reported in (2016) 16 SCC 30.

(v) Raj Kapoor and others vs. State and others reported in (1980) 1 SCC 43.

(vi) Vijay and another vs. State of Maharashtra and another reported in (2017) 13 SCC 317.

(vii) Zahira Habibulla H, Sheikh and others vs. State of Gujarat and others in Criminal Appeal Nos.446-449 / 2004 (arising out of SLP (Crl) Nos.538-541/2004) and Criminal Appeal Nos.450-452 / 2004 (Arising out of SLP (Crl) Nos.1039-1041/2004).

(viii) Rajendra Prasad vs. The Narcotic Cell through its Officer in Charge, Delhi in Crl. Appeal No.621 of 1999.

(ix) Zahira Habibulla H, Sheikh and others vs. State of Gujarat and others in Criminal Miscellaneous Petition Nos.4827-4833 / 2004 in Criminal Appeal Nos.446-449 / 2004 and Criminal Appeal Nos. 450-452 / 2004.

(x) Satbir Singh vs. State of Haryana and others in SLP (Crl) No.



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1258 / 2022.

***(xi) Gaurav Maini vs. The State of Haryana in Criminal Appeal
Nos.696 of 2010, 695 of 2010, 1724 of 2010 and 584 of 2013.***

3. The learned counsel appearing for the 2 to 5 respondents would submit that based on the complaint lodged by the petitioner, the 1st respondent registered the case in Cr. No.55 of 2013 for the offences under Sections 294(b), 341, 324, 506(ii) of IPC read with Section 3(1) of TNPPDL Act @ Sections 294(b), 341, 324, 506(ii) and 120-B, 109, 34 of IPC and Section 3(1) of TNPPDL Act. Thereafter, the 1st respondent conducted investigation, filed a final report and the same was committed to the Sessions Court. The Sessions Court made over the case to the Additional Assistant Sessions Court, Pudukottai in S.C. No.98 of 2023. The prosecution examined the witnesses PW1 to PW12. Thereafter, the prosecution filed a petition before the trial Court to recall LW7, LW13 and LW14 without any valid reasons. Therefore, the trial Court passed a detailed order holding that "already PW8 and PW9 have categorically deposed about the injuries and the Accident Registers have been marked

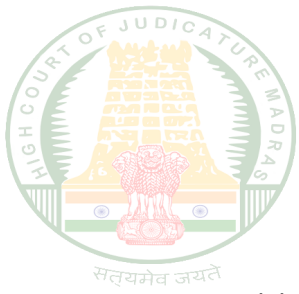


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as Ex.P.6 to Ex.P.12 and there are no reasons stated by the petitioner to recall witnesses. Already the Hon'ble Supreme Court in Miscellaneous Application No.1333 of 2022 in SLP (Crl) No.3411 of 2020 directed the trial Court to dispose the case within 6 months and thereby, without any valid reasons and only to delay the proceedings, the petition has been filed by the petitioner". Therefore, the above order passed by the trial Court is based on the available records and evidences and the trial Court correctly dismissed the petition.

3.1. It is true that this Court granted stay for pronouncing judgment through an order dated 09.12.2024. As per the Court records, the petitioner filed a memo as about the pendency of the Writ petition and Criminal Original petition. However, there is no mention about the granting of stay for passing judgment in the notes paper and the copy of the stay order was not brought to the knowledge of the Court. The petitioner has not co-operated for the disposal of the case. Already the Hon'ble Supreme Court directed the trial Court to complete the proceedings within 6 months. Therefore, the trial Court has pronounced the judgment on merits. There is an appeal remedy available to the

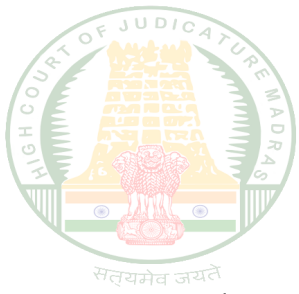


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petitioner and they can prefer appeal in the manner known to law, if he is aggrieved by the judgment passed by the trial Court. It is true that the trial Court ought not to have passed the judgment, once the Court granted stay from pronouncing the judgment, but that order was not brought to the knowledge of the Court and the judgment was passed on merits, thereby, it need not be set aside and the petitioner can approach the Appellate Authority. Therefore, the present petition is liable to be dismissed.

4. This Court heard both sides and perused the entire materials available on record.

5. In this case, the present Criminal Original petition has been filed challenging the order passed by the trial Court in dismissing the recall petition filed by the prosecution. On behalf of the prosecution, the Investigation Officer / the Inspector of Police filed an application before the trial Court to recall the witness No.7 Mr. S. Sasi Kumar and the witness Nos.13 and 14, the Doctors alleging that the witness No.7 Mr. Sasikumar, is the attesting witness in the Seizure Mahazar, where the material objects were seized and the witnesses 13 and 14, Doctors, have to be examined to speak about the nature of injuries and also some



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documents mentioned in the final report have to be marked. The respondents 2 to 5 herein, had filed a counter by opposing the recall petition that already the Doctors were examined and cross examined and the witness Sasikumar was also examined as witness and through him, some documents were also marked. Therefore, only to fill up the lacunae, the petition has been filed.

6. The trial Court dismissed the application by holding that the said Sasikumar was examined as PW6 and the recovered article was identified by the investigating officer PW12 and material objects were marked as M.O.1. to M.O.4. Therefore, he need not be recalled. As far as the Doctors LW13 and LW14 are concerned, they were examined as PW8 and PW9 respectively and already they stated about the nature of injuries and the Accident Registers were marked as Ex.P.6 to Ex.P.12. There is no explanation as to what purpose, the Doctors have to be further examined. Already the Hon'ble Supreme Court directed the trial Court to dispose the case within 6 months, but in order to delay the proceedings, the petition has been filed.

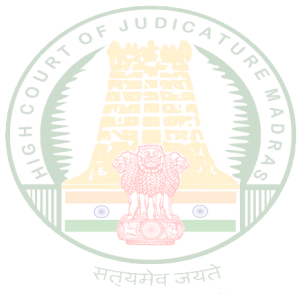


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7. This Court also perused the entire records. On perusal of records, it is seen that as rightly observed by the trial Court, the attesting witness in the Seizure Mahazar, PW6 was examined and the properties were identified by the investigation officer. As far as the examination of the Doctors / PW8 and PW9 is concerned, already they were examined and Ex.P.6 to Ex.P.12 were also marked and the prosecution failed to state as to how and on which aspect, the further examination of the said witnesses are essential to establish their case. Moreover, the Hon'ble Supreme Court has directed the trial Court to dispose the case within 6 months. But the petitioner / defacto complainant did not co-operate for the speedy disposal of the case as directed by the Hon'ble Supreme Court.

8. The prosecution side evidence was closed as early as on 18.11.2024. Thereafter, the case was posted for examination under Section 313(1)(b) of Cr.P.C. At that time, on the side of the defacto complainant, a memo was filed that he has filed a petition before the Hon'ble Supreme Court and sought adjournment. Already the Hon'ble



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Supreme Court directed the trial Court to dispose the case within 6 months. Therefore, the accused were examined under Section 313(1)(b) of Cr.P.C. on 20.11.2024. Thereafter, the case was posted for arguments and the trial Court also adjourned the matter for defacto complainant's side arguments, if any. Thereafter, the case was periodically adjourned. Therefore, the conduct of the defacto complainant shows that he has not co-operated for speedy disposal of the case. Therefore, as rightly observed by the learned trial Judge that the application has been filed only to delay the proceedings. Therefore, there are no merits in the application filed by the prosecution before the Trial Court.

9. The defacto complainat, who was not a party in that petition, has preferred the present petition. It is for the prosecution to conduct the case and the defacto complainant can assist the prosecution and already, the petitioner engaged a counsel to assist the prosecution. However, the prosecution has not challenged the order passed by the trial Court in dismissing the recall petition and the defacto complainant has only challenged order before this Court. The dispute between the parties is

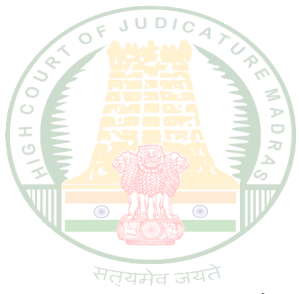


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among the family members and due to some personal issues, the petitioner did not want to dispose the pending criminal case. Therefore, the conduct of the defacto complainant shows the delay tactics. Therefore, the present petition has no merits and deserves to be dismissed.

10. As far as the disposal of the case by the trial Court despite the interim stay granted by this Court is concerned, this Court perused the notes paper for the date on 16.12.2024, where it has been written as if *“A1 present. A2 to A4 absent...Memo filed with copy of orders in Crl. O.P. (MD) No.21484 of 2024 and W.P. (MD) No.29514 of 2024. Admission orders. Petition under Section 309 of Cr.P.C. pending in Crl. M.P. No.27 of 2024. Execute witness warrant against LW2. Last chance call on 18.12.2024”*. The above said order shows that a memo was filed along with order copy of Crl.O.P. (MD) No.21484 of 2024 and W.P. (MD) No.29514 of 2024. This Court passed orders in W.P. (MD) No. 29514 of 2024 and Crl. O.P. (MD) No.21484 of 2024 on 09.12.2024. In both the orders, no interim stay was granted and only issued orders for



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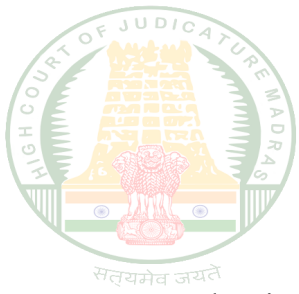
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notice to the respondents, whereas this Court passed an order in Crl. M.P. (MD) No.13312 of 2024 in Crl. O.P. (MD) No.21484 of 2024 through a separate sheet on 09.12.2024 by granting an interim stay in Para No.3 as follows:-

“3. Considering the facts and circumstances of the case, there shall be an order of interim stay of passing final judgment alone and the trial proceedings shall go on”.

Therefore, the interim stay was granted for passing final judgment by this Court vide a separate order passed in Crl. M.P. (MD) No.13312 of 2024 in Crl. O.P. (MD) No.21484 of 2024.

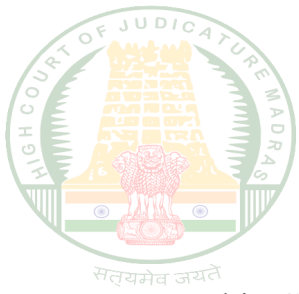
11. The docket sheet of the case diary for the date on 16.12.2024 reflects that only the copy of the admission orders passed in Crl. O.P. (MD) No.21484 of 2024 and W.P. (MD) No.29514 of 2024 alone were produced before the trial Court. Whether the interim stay granted by this Court in Crl. M.P. (MD) No.13312 of 2024 in Crl. O.P. (MD) No.21484 of 2024 was brought to the knowledge of the trial Court or not is the question. Normally when an interim stay is granted by the High Court, the trial Courts, being the subordinate Courts, wont pass any orders after



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having knowledge about the stay order. There is no allegation as against the judicial officer by attacking his bias in this case. Therefore, without any records, to show that the stay granted by this Court, was brought to the knowledge of the trial Court, it cannot be termed as 'stay order was properly communicated to the trial Court'. In the meantime, the trial Court has pronounced the judgment on 03.01.2025. Whereas this Court passed an order on 04.01.2025 by staying the judgment of acquittal rendered by the trial Court in S.C. No.98 of 2023 on 03.01.2025 and no consequential order or any effect to be given to the said judgment pronounced on 03.01.2025. It shows that already the matter has been disposed of by the trial Court and only thereafter, this Court passed the order on the same date. Therefore, this Court need not interfere with the order passed by the trial Court in the absence of records to show that the order of stay has been properly communicated to the trial Court.

12. On perusal of records, it is seen that on behalf of the defacto complainant, a memo was filed about the pendency of cases and the stay granted by this Court, where the copy of the interim stay order granted by

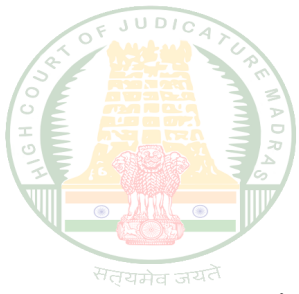


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this Court has not been enclosed. On behalf of the respondents/ accused also, filed objection for the memo that as per the orders passed in Crl. O.P. (MD) No.21484 of 2024 and W.P. (MD) No.29514 of 2024, there is no any orders for staying the proceedings. Therefore, prayed to dismiss the petition. It shows that the defacto complainant failed to produce the copy of the interim stay order. It is true that the copy of the admission orders passed in Crl. O.P. (MD) No.21484 of 2024 and W.P. (MD) No. 29514 of 2024 were brought to the knowledge of the Court, where there is no interim order granted by staying the pronouncement of judgment. Therefore, this Court need not interfere with the order passed by the trial Court. However, the petitioner is at liberty to challenge the said acquittal judgment pronounced by the trial Court in the manner known to law.

13. The learned Senior counsel relied upon various judgments that once this Court granted interim order staying from pronouncing the judgment and despite the same, if the trial Court passed the order, then the said acquittal judgment passed by the trial Court is non-est in the eye of law and the same is liable to be set aside. This Court already in the



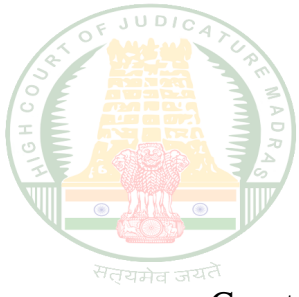
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previous paragraphs observed that no records to show that the order of stay was communicated to the trial Court. When the Court passed separate orders, only two orders in respect of admission were furnished to the trial Court and the interim order passed in the criminal miscellaneous petition might have been omitted by the defacto complainant. Therefore, the above said judgments are noway helpful to decide the case in favour of the defacto complainant.

14. Already this Court passed an order on 04.01.2025 by staying the judgment of acquittal rendered by the trial Court in S.C. No.98 of 2023 on 03.01.2025. Since there is no intention to the learned trial Judge to pronounce judgment despite the stay order of the High Court and there are no records to show that the interim stay order was brought to the knowledge of the trial Court, the judgment rendered by the trial Court has to be given effect.

15. In view of the above discussions, this Court is of the opinion that the Criminal Original petition has no merits and deserves to be dismissed. However, the petitioner is at liberty to challenge the acquittal judgment in the manner known to law. Since the judgment of the trial



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Court was not given effect through the order of this Court and now granted liberty to challenge the judgment through appeal, the petitioner is entitled to the benefit of Section 14 of the Limitation Act for the period of pendency of this petition. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

21.07.2025
[1/2]

index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mjs

To

The Inspector of Police,
Thanjavur Medical College Police Station,
Thanjavur District.



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P.DHANABAL,J

mjs

Pre-delivery Judgment in
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