



Crl.A(MD)No.1119 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :07.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.1119 of 2024

1.A.Namatchivayam

2.N.Selvakumar

3.P.Murugan

... Appellants/
Accused 1 to 3

Vs.

1.State of Tamil Nadu
Represented through
The Deputy Superintendent of Police,
Aundipatty Sub Division,
Aundipatty P.S.,
Theni District.
Cr.No.523/2014

2.K.Murugan

... Respondents

(R2 is suo motu impleaded as per order of the Court, dated 03.01.2025 in Crl.A(MD) No.1119 of 2024 and Crl.MP(MD) No.13874 of 2024 by KKRJ)

PRAYER: Appeal filed under Section 374 (2) of the Code of Criminal Procedure, 1973, as against the order passed in Crl.M.P.No.778 of



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2024 in Spl.S.C.No.23 of 2020, dated 19.09.2024, on the file of Special Court for trial of cases under SC/ST (POA)Act, Theni, to set aside the same as illegal.

For Appellant : Mr.V.P.Rajan
For R1 : Mr.P.Kottaichamy
Government Advocate (Crl Side)
For R2 : No appearance

J U D G M E N T

The appellants, who are the accused 1 to 3 in Spl.SC No.23 of 2020, on the file of Special Court for trial of cases under SC/ST (POA)Act, Theni have approached this Court as against the order passed by the learned Judge in Crl.M.P.No.778 of 2024 in Spl.S.C.No. 23 of 2020, dated 19.09.2024, rejecting the request of these appellants to recall PWs1 and 2 for the purpose of cross examination.

2.The learned counsel appearing for the appellants submits that the appellants have failed to cross examine the witnesses PWs 1 and 2, when they were examined on 21.10.2020. The appellants have filed an application, under Section 348 of BNSS, to recall PWs 1 and



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2 for the purpose of cross examination, in Cr.MP No.778 of 2024 and the same was dismissed by the learned Judge, Special Court for trial of Cases under SC/ST(POA) Act, Theni that the appellants have not cross examined the witnesses PWs 1 and 2 deliberately on 21.10.2020 and the application under Section 348 of BNSS has been filed with a delay of 3 years and 10 months, in order to drag on the proceedings further. The learned counsel further submits that the counsel, who represented the appellants before the trial Court was not available on 21.10.2020, when PWs 1 and 2 were examined. Therefore, there was no cross examination of the witnesses PWs 1 and 2 by the accused on that day. He admits that there was a delay in filing the application to recall the witnesses. The reason assigned by the learned counsel is that there was vacancy in the post of Judicial Officer in the Special Court, at the relevant point of time and therefore, the trial has not been proceeded for some time. The learned counsel has not filed the application in time and this is not neither willful nor wanton. He further submits that if the witnesses PWs 1 and 2 are not cross examined, the entire defence would be affected.



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3.This Court has ordered notice to the defacto complainant on 03.01.2025. Notice was also served and his name was also printed. However, there is no representation for the second respondent.

4.The learned Government Advocate(Crl.side) appearing for the official respondent submits that these appellants have deliberately avoided to cross examine PWs 1 and 2, when they were examined on 21.10.2020. He further submits that the trial has now been progressed, by examining nine witnesses so far. At this stage, the appellants have filed an application under Section 348 of BNSS with a delay, in order to fill up the lacuna and to drag on the proceedings. Therefore, this appeal is liable to be dismissed.

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

6.The appellants herein are the accused in Spl.SC.No.23 of 2020, on the file of the Special Court for trial of cases under SC/ST



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(POA)Act, Theni, for the offence under Sections 294(b), 323, 506(i) of IPC and 3(1)(r) (s) of SC/ST (POA)Act, Theni. Admittedly, the appellants have failed to cross examine the witnesses Pws 1 & 2, who are the main witnesses in Spl.SC No23 of 2020, when they were examined on 21.10.2020. In the event, if the appellants are not provided with an opportunity of cross examination, it would affect their case in the trial.

7.Considering the submissions made by the learned counsel for the appellants and in order to provide one more opportunity, this Court is not inclined to allow this appeal with a cost of Rs.5,000/- each, which has to be paid by the appellants to PWs1 and 2. On such payment, the trial Court shall fix a specific date for cross examination of PWs 1 and 2, as convenient to them and permit these appellants to cross examine PWs 1 and 2 on that specific date. In the event, if the appellants failed to cross examine the witnesses PWs1 and 2, on that date, no further opportunity would be provided to the appellants.



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8. With the above condition and direction, this Criminal

Appeal is allowed.

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Index : Yes/No
Internet : Yes/No
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To

1. The Special Court for trial of Cases under SC/ST (POA) Act, Theni,
2. The Deputy Superintendent of Police,
Aundipatty Sub Division,
Auntipatty P.S.,
Theni District.



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B.PUGALENDHI, J.,

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Judgment made in
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