



Crl.O.P(MD).No.22211 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.01.2025

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.O.P(MD).No.22211 of 2024
and Crl.M.P(MD) No.13817 of 2024

1. Kathirvel

2. Ambalavanan

... Petitioners

Vs

The State of Tamil Nadu,
Rep. by the Inspector of Police,
Nagamalai Pudukottai Police Station,
Madurai.
(Crime No. 299/2012).

... Respondent

Prayer: Criminal Original Petition filed under section 528 of BNSS to set aside the order passed in Crl.M.P. No. 4714 of 2024 in C.C. No. 520 of 2016 on the file of the Judicial Magistrate No. VI, Madurai, dated 18.10.2024 and to recall the witnesses of PW1 to PW3 for cross examination.

For Petitioners : Mr. P.Thirumahilmaran

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been filed to set aside the order passed in Crl.M.P. No. 4714 of 2024 in C.C. No. 520 of 2016 on the file of the Judicial Magistrate No. VI, Madurai, dated 18.10.2024 and to recall the witnesses of PW1 to PW3 for cross examination.

2. The petitioners, who are arrayed as A1 and A2, are facing trial in C.C.No.520 of 2016 for the offence punishable under sections 120B, 465, 468, 471, 420, 506(i) IPC, have filed a petition under Section 348 of BNSS to recall PW1 to PW3, which was dismissed by the trial Court by order, dated 18.10.2024.

3.It is the contention of the petitioners that in this case, there are four accused persons. The petitioners are arrayed as A1 and A2. On 15.12.2020, PW1 and PW2 were examined in chief and on 05.02.2021, PW3 was examined in chief. At that point of time, all the accused persons have filed petitions before this Court seeking quash and the same was pending before this Court. Therefore, the petitioners could not cross-examine those witnesses on the date of their chief examination. However, this Court has quashed the charges only against A3 and A4 and



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dismissed the petition in respect of the petitioners/A1, A2. After dismissal of the quash petition, the petitioners have filed a recall petition and the same was dismissed by the trial Court without giving any reason and mechanically dismissed the petition.

4.The learned counsel for the petitioners further submitted that the evidence is not yet completed and it has to be tested by way of cross-examination. However, the trial Court denied the fundamental right of the petitioners to cross-examine the witnesses. In support of his contention, the learned counsel has relied upon the decision of Hon'ble Apex Court in ***P.Sanjeeva Rao Vs State of Andra Pradesh*** reported in ***2012(4) Supreme 203***.

5.The learned Additional Public Prosecutor appearing for the respondent submitted that initially charge sheet was filed against four accused persons and quash petitions have been filed by all the accused persons. As regards to A1 and A2, the quash petition was dismissed and as against A3 and A4, the quash petition was allowed. Now, the trial is in progress. There are totally seven witnesses and four more witnesses have to be examined. The case is posted for further evidence on



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04.02.2025. Since the case is of the year 2012 and as of now, more than 12 years lapsed and hence, prayed for dismissal of the petition. However, he fairly submitted that the right of the petitioners to cross-examine the witnesses cannot be denied on the ground of technicality. Hence, the petitioners may be permitted to cross-examine the witnesses, on payment of costs.

6.Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

7.It is seen from the records that the case is posted for hearing on 04.02.2025 for examination of further witnesses. Without cross examination of witnesses, the evidence could not be completed and the witnesses have to be tested by way of cross-examination. The credibility of witnesses can be tested only when the testimony is put through the fire of cross-examination. It is only for the benefit of the Court to testify the genuineness of the witnesses. The petitioners' right of cross-examination cannot be denied on the ground of technicality.



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8.In the case as discussed *supra*, the Hon'ble Apex Court has rightly held that grant of fairest opportunity to the accused to prove their innocence was the very object of every fair trial. Denial of an opportunity to cross examine the witness would amount to denial of right of the accused. Denial of an opportunity will result in a serious miscarriage of justice.

9.In view of the same, this Court is inclined to set aside the impugned order, dated 18.10.2024 in Cr.M.P.No.4714 of 2024 in C.C.No.520 of 2016, on the file of Judicial Magistrate No.IV, Madurai and permitted the petitioners to cross-examine PW1 to PW3, on payment of costs of Rs.5,000/- (Rupees five thousand only) to each of the witnesses/PW1 to PW3, on the date fixed by the trial Court, without any delay.

10.Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

20.01.2025

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
PNM



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To

1.The Judicial Magistrate No.VI, Madurai

2.The Inspector of Police,
Nagamalai Pudukottai Police Station,
Madurai.
(Crime No. 299/2012).

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



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M. NIRMAL KUMAR, J.

PNM

ORDER IN
Crl.O.P(MD) No. 22211 of 2024
and Crl.M.P(MD) No.13817 of 2024

20.01.2025