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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated	:	30.01.2025
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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.2 of 2025

and

CrI.M.P.(MD).No.23 of 2025

1.Elangovan

2.Thonthi @ Virumandi

3.Prabu @ Prabhakaran

... Appellants

Vs.

1.The Deputy Superintendent of Police,
Periyakulam Sub Division,
Theni District.

2.The Inspector of Police,
Periyakulam Police Station,
Theni District.
(In Crime No.24 of 2018)

3.Prabu

... Respondents

PRAYER: Criminal Appeal has filed under Section 14(2)(a) of SC/ST Act Cases, to call for the records and set aside the impugned order passed in Cr.M.P.No.851 of 2024 in Spl.S.C.No.118 of 2020 dated 19.09.2024, by the



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learned Special Court for Trial of Cases under SC/ST (POA) Act, Theni.

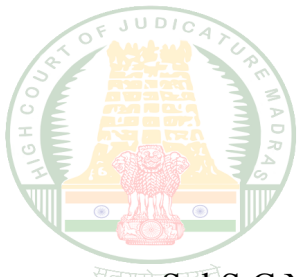
For appellant : Mr.S.Sivaprakash
For respondent : Mr.M.Sakthi Kumar (for R1 & R2)
Government Advocate (Crl. Side)
Mr.A.Jainul Abudheen (for R3)

JUDGMENT

The appellants are Accused Nos.1 to 3 in Spl.S.C.No.118 of 2020 on the file of the learned Special Court for Trial of Cases under SC/ST (POA) Act, Theni, and they have filed this criminal appeal to set aside the impugned order passed in Cr.M.P.No.851 of 2024 in Spl.S.C.No.118 of 2020 dated 19.09.2024, by the learned Special Court for Trial of Cases under SC/ST (POA) Act, Theni.

2. The appellants who are accused in Spl.S.C.No.118 of 2020, are facing charges under Sections 294(b), 324 and 506(ii) of IPC, and 3, 3(1)(r), 3(1)(s), and 3(2)(va) of SC/ST (Prevention of Atrocities) Act, 1989.

3.The respondent Police, after completing the investigation, filed the final report against the appellant and the same was taken on file in



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Spl.S.C.No.118 of 2020, and trial was commenced and P.W.1 was examined in chief on 24.06.2024. Due to the health condition of the counsel on record and non-availability of important document, the said witness was not cross examined. Hence, he filed recall petition under Section 311 of Cr.P.C., in Cr.M.P.No.851 of 2024 and the same was dismissed by the learned trial Judge, dated 19.09.2024. Challenging the same, the present appeal has been filed.

4.The learned counsel for the appellants submitted that due to the health condition and non-availability of important document, the counsel could not cross examine the witness on the date of the chief examination. Hence, he prayed to allow this appeal by setting aside the dismissal order passed by the learned trial Judge.

5.This Court after entertaining the appeal, sent a notice to the defacto complainant and the defacto complainant appeared before this Court through counsel and in person and submitted that he has no objection to allow this appeal.



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6.The learned Additional Public Prosecutor appearing for the State objected to allow this appeal on the ground that even though sufficient opportunity was given to the appellants, they failed to cross examine P.W.1. Hence, he prayed for dismissal of the appeal by confirming the dismissal order passed by the learned trial Judge.

7.This Court considered the rival submission made by the learned counsel appearing on either side and also perused the materials available on record.

8. A cursory reading of Section 311 Cr.P.C., would show that where the evidence appeared to be essential for the just adjudication of a case, a witness could be recalled at any stage of the trial. As rightly pointed out by the learned Counsel for the appellants, the above petition was filed under Section 311 Cr.P.C., for cross examination and not for further cross examination.



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9. No doubt, the appellants/accused cannot be allowed to recall and cross-examine P.W.1 as per their whims and fancies, but at the same time, taking note of the fair trial concept, this Court is of the view that the appellants should be given an opportunity to cross-examine the said witness and if such permission is granted, as rightly contended by the learned Counsel for the appellants, no prejudice would be caused to the prosecution.

10. This Court is of the view that one more opportunity should be given to the appellants to cross-examine the above said witness, but at the same time, this Court is also of the view that the appellants must be mulcted with costs and further condition that the appellants/accused should cross-examine the witnesses on the day when the witness is produced before the Court below and if for any reason, the appellants fail to cross-examine the said witnesses on that particular day, then they will forfeit their rights to cross-examine him.



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11. Considering the serious allegation against the appellants and the nature of allegation, this Court is inclined to give an opportunity to cross examine the material witness namely, P.W.1.

12. Accordingly, the dismissal order passed in CrI.M.P.No.851 of 2024 in Special S.C.No.118 of 2020, dated 19.09.2024 on the file of the learned Special Court for Trial of Cases under SC/ST (POA) Act, Theni, is hereby set aside and the appeal is allowed on the following terms of conditions:-

(i) The appellants shall pay an amount of **Rs.10,000/- (Rupees Ten Thousand) each** to P.W.1 within a period of **four weeks** from the date of receipt of a copy of this order.

(ii) On receipt of payment, the trial Court shall permit the appellants to cross examine the witness P.W.1. If the appellants fail to pay the amount, the trial Court shall proceed further with the materials available, and pass suitable orders.

(iii) The appellants should cross-examine all the witnesses whenever the witnesses are produced before the Court.



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(iv) In case the appellants failed to cross-examine the particular witness, then they will forfeit their right to cross-examine the witness.

(v) The learned Special Court for Trial of Cases under SC/ST (POA) Act, Theni, is directed to summon the witnesses and complete the examination of the said witnesses within six weeks from the date of receipt of a copy of this order.

30.01.2025

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

vsg



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To

- 1.The learned Special Court
for Trial of Cases under SC/ST (POA) Act,
Theni.
- 2.The Deputy Superintendent of Police,
Periyakulam Sub Division,
Theni District.
- 3.The Inspector of Police,
Periyakulam Police Station,
Theni District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN.J.

*vs*g

Crl.A.(MD).No.2 of 2025

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