



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-06-2026

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THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL OP No. 11367 of 2026

and

CRL MP No.8088 of 2026

1. M.Kesavan

2. S.Sundari

3. Pandeewari

Petitioner(s)

Vs

The State of Tamil Nadu,
Rep by its Inspector of Police,
J6, Thiruvanmiyur Police Station,
Chennai.
Crime No.7 of 2026

Respondent(s)

PRAYER: Criminal Original Petition filed under Section 528 of BNSS, 2023,
to set aside the order dated 08.04.2026 made in Crl.MP.No.10871 of 2026 in
CC.No.553 of 2025 on the file of Learned XVIII Metropolitan Magistrate,
Saidapet, Chennai.

For Petitioner(s): S.Lakshmikanth

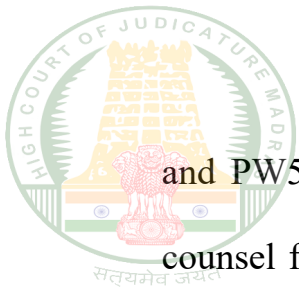
For Respondent(s): Mr.R.Rajasekaran
Government Advocate (Crl. Side)

**ORDER**

This Criminal Original Petition has been filed seeking to set aside the order dated 08.04.2026 made in Crl.MP.No.10871 of 2026 in CC.No.553 of 2025 on the file of Learned XVIII Metropolitan Magistrate, Saidapet, Chennai, dismissing the petition filed by the petitioners under Section 348 of BNSS to recall PW1 to PW5 for the purpose of cross-examination.

2. The learned counsel for the petitioners submitted that the petitioners, who are arrayed as accused 1 to 3, are facing trial in C.C.No.553 of 2025 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai for offences under Section 303(2) BNS, which was subsequently altered to 305(A) BNS, had filed the petition under Section 348 of BNSS, to recall PW1 to PW5 for the purpose of cross-examination. However, the trial Court vide order dated 08.04.2026 in Crl.M.P.No.10871 of 2026 in C.C.No.553 of 2025, had dismissed the same. Aggrieved by the said order, the petitioner has filed the present petition.

3. The learned counsel for the petitioners submitted that PW1 and PW2 were examined on 30.08.2025. Due to the death demise in the family of the leading counsel, they could not be cross examined. Subsequently, PW3, PW4



and PW5 were examined on 17.09.2025. The main contention of the learned counsel for the petitioners is that unless they cross examine PW1 and PW2, it would not be appropriate to cross examine PW3 to PW5, and therefore they sought for a deferment. He further submitted that the trial Court dismissed the petition filed under Section 348 of BNSS without recording any valid observations.

4. He further submitted that, if the petitioners are not given an opportunity to cross-examine these witnesses, they would be put to a great predicament. Hence, he prayed that the order passed in Crl.M.P.No.10871 of 2026 dated 08.04.2026 be set aside and that the petitioners be permitted to recall PW1 to PW5 for cross-examination, on terms as to costs.

5. Mr.R.Rajasekaran, learned Government Advocate (Crl. Side), appearing for the respondent submitted that, in this case PW1 and PW2 were examined on 30.08.2025 and PW3, PW4 and PW5 were examined on 17.09.2025. However, the petitioners failed to cross-examine the witnesses on the respective date when they were examined in chief. He pointed out that the recall petition was filed belatedly only when the matter was posted for the examination of the Investigating Officer emphasizing that no prosecution witness has been cross examined sofar.

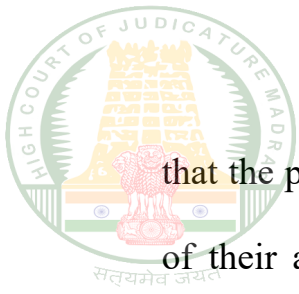


6. On the enquiry made by this Court as to whether the respondent police would be able to produce the witnesses on a particular date to be fixed by the trial Court, the learned Government Advocate (Criminal Side), on instructions, submitted that the witnesses are residents of Thiruvananthapuram, Chennai and the respondent would be able to produce them before the trial Court.

7. Having heard the learned counsel appearing on either side and upon perusal of the materials available on record and considering the fact PW1 to PW5 were not cross-examined by the petitioners, this Court is inclined to grant one final opportunity to the petitioners to cross-examine that PW1 to PW5, subject to the payment of costs.

8. Accordingly, this Criminal Original Petition is allowed. The order passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, in CrI.M.P.No.10871 of 2026 in C.C.No.553 of 2025 dated 08.04.2026, is set aside, on the condition that the petitioners deposit a sum of **Rs.5,000/- (Rupees Five Thousand only)** before the trial Court within a period of two weeks from the date of receipt of a copy of this order.

9. On such deposit made by the petitioners, the learned trial Judge shall recall PW1 to PW5 and fix a date for their cross-examination. It is made clear



that the petitioners shall cross-examine the said witnesses on the very same day of their appearance. In the event of their failure to do so, they will lose the opportunity to cross-examine the witnesses.

10. The trial Court shall disburse a sum of Rs.1,000/- to each of the witnesses, namely PW1 to PW5, on the date of their appearance.

11. Consequently, the connected miscellaneous petition is also closed.

09-06-2026

Jd

Neutral Citation:Yes/No

To

1. Learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. The Inspector of Police,
J6, Thiruvanmiyur Police Station, Chennai.
Crime No.7 of 2026

3. The Public Prosecutor,
High Court of Madras.



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M.NIRMAL KUMAR J.
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