



Crl.OP(MD)No.22063 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.22063 of 2025

and

Crl.M.P.(MD)No.18991 of 2025

Jegan

... Petitioner/Accused No.1

Vs.

The State of Tamil Nadu,
Rep. by The Deputy Superintendent of Police,
Theni Sub Division,
Theni district.
(crime no.101/2019)

... Respondent / complainant

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the entire records in relating to the impugned order dated 31.10.2025 made in Spl.SC No.157 of 2020 on the file of the learned Special Court for Trial of Cases under SC/ST (POA) Act, Theni and to set-aside the same.

For Petitioner : Mr.S.Jeyakumar

For Respondent : S.Ravi,
Additional Public Prosecutor



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ORDER

Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating to the order dated 31.10.2025 passed in Cr.M.P.No.233 of 2025 in Spl.S.C.No.157 of 2020 on the file of the learned Special Court for Trial of Cases under the SC/ST (Prevention of Atrocities) Act, Theni, and to set aside the same and consequently to permit recall of P.W.1 to P.W.7 for cross-examination; and to grant interim stay of further proceedings in Spl.S.C.No.157 of 2020 pending disposal of this petition.

Preface:

2. The power to recall and re-examine a witness is a procedural instrument intended to aid the Court in arriving at the truth, while at the same time preserving the fairness of trial to all stakeholders including the accused, the victim, and the society. A criminal trial cannot be reduced to a mere ritual of recording chief-examination without affording a meaningful opportunity for cross-examination, subject however to reasonable safeguards against abuse, delay, and harassment.



3. The present petition challenges the order of the learned Special Court dismissing the petitioner's application filed under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter, "BNSS") seeking recall of P.W.1 to P.W.7 for cross-examination in Spl.S.C.No.157 of 2020.

Factual background:

4. The first respondent police registered a case in Crime No. 101 of 2019 for alleged offences under Sections 147, 294(b), 323 IPC, and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, and Sections 3(1)(r)(s) and 3(2)(va) of the SC/ST (Prevention of Atrocities) Act, 2015, on the complaint of the second respondent.

5. The prosecution case, in substance, is that owing to a land dispute, on 02.02.2019 at about 10.30 hours, when the *de facto* complainant and her sisters-in-law were sitting in front of the *de facto* complainant's house, the accused came there, abused them in filthy language, and attacked them.



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6. The final report was filed and taken on file as Spl.S.C.No. 157 of 2020 before the learned Special Court for Trial of Cases under the SC/ST (Prevention of Atrocities) Act, Theni. During trial, P.W.1 to P.W.3 were examined on 19.09.2024, P.W.4 and P.W.5 were examined on 14.10.2024, P.W.6 was examined on 13.11.2024 and P.W.7 was examined on 12.12.2024. It is not in dispute that these witnesses were not cross-examined on the dates of their examination.

7. The petitioner thereafter filed Cr.M.P.No.233 of 2025 under Section 348 BNSS seeking recall of P.W.1 to P.W.7 for cross-examination. The learned Trial Court, by order dated 31.10.2025, dismissed the said petition, essentially on the reasoning that the petition did not specify the nature of documents said to have been obtained later, that such documents were not enclosed and that the accused had time from 2020 to 2024 to procure documents, and the belated request after chief-examination was not acceptable. Aggrieved thereby, the petitioner has invoked the inherent jurisdiction of this Court under Section 528 BNSS.



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Submissions:

8. The learned counsel for the petitioner submitted that cross-examination of P.W.1 to P.W.7 could not be done due to non-availability of certain revenue proceedings, which have now been obtained, namely the proceedings of the Tahsildar, Theni in Na.Ka.SFI.13,14,15,17/2016/A8 dated 02.01.2017 and the proceedings dated 02.01.2017 of the Deputy Tahsildar, Theni. It is contended that these documents are relevant to the land dispute which forms the background of the occurrence and are necessary for an effective defence. One effective opportunity is sought, and the petitioner undertakes to proceed without delay and within a time-bound schedule.

9. The learned Additional Public Prosecutor opposed the petition. It is submitted that the trial pertains to a Special Case of the year 2020; witnesses were examined in 2024; and the recall application did not disclose what documents were obtained after the examination of witnesses. It is further contended that the accused had sufficient time to obtain any documents, and the attempt to recall P.W.1 to P.W.7 after allowing the chief-examination to go



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untested is an attempt to protract proceedings in a case involving offences under the SC/ST (POA) Act.

10. This Court has considered the rival submissions and perused the material placed.

11. *Point for determination:*

The point that arises for consideration is whether the order dated 31.10.2025 in Cr.M.P.No.233 of 2025 dismissing the recall application under Section 348 BNSS suffers from such infirmity as to warrant interference under Section 528 BNSS, and if so, on what terms?

Analysis:

12. Cross-examination is not a procedural luxury, but a substantive safeguard which enables the Court to test the veracity of testimony, expose inconsistencies, and assess credibility. A trial where material prosecution witnesses remain wholly untested by cross-examination is vulnerable to serious prejudice equally,



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repeated recall and unregulated cross-examination can become a tool of harassment and delay, particularly in sensitive offences.

13. Section 348 BNSS (corresponding broadly to Section 311 Cr.P.C., 1973) confers wide discretion upon the Court to recall and re-examine witnesses. The guiding principle is the advancement of justice. The power is to be exercised judiciously neither mechanically refusing recall merely because the request is belated, nor mechanically allowing recall in a manner that undermines expeditious trial.

14. The learned Trial Court has dismissed the recall petition primarily on the ground that the nature of documents was not clearly spelt out, documents were not annexed, and the accused had sufficient time to secure documents earlier. These are relevant considerations. However, they cannot be treated as conclusive when the consequence is that P.W.1 to P.W.7, including the principal witnesses remain completely uncross-examined.



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15. This Court notices the following undisputed features:

- (i) The witnesses have been examined during 2024, and the recall application has been moved thereafter.
- (ii) P.W.1 to P.W.7 were not cross-examined at all.
- (iii) The petitioner expresses readiness to proceed on fixed dates without adjournment.
- (iv) The prosecution apprehends delay and misuse.

16. In a prosecution under the SC/ST (POA) Act, the victim's right to dignity, prompt adjudication, and protection against retraumatisation must be respected. At the same time, the accused cannot be denied a meaningful opportunity to defend. The Court must therefore adopt a calibrated approach: permit recall as a last and final opportunity, but ring-fence it with strict conditions ensuring expedition and preventing harassment.

17. The petitioner has referred to certain revenue proceedings said to have been obtained later. Even assuming that the recall application before the learned Trial Court was not as precise as it ought to have been, this Court is of the view that the ends of justice



would be better served by permitting one opportunity to cross-examine, particularly because the alternative is to proceed further with entirely untested chief-examinations of key witnesses, which may result in avoidable prejudice and further litigation.

18. The apprehension of the prosecution regarding protraction is legitimate. Hence, the permission, if granted, must be conditioned by (a) fixed schedule; (b) no adjournments; (c) limited recall only for cross-examination; (d) costs; and (e) consequences for default.

19. This Court also makes it clear that recall is not granted to enable fishing enquiries, intimidation, or character assassination. The cross-examination shall remain confined to relevant aspects of the prosecution case and defence, and shall be regulated by the learned Special Court in accordance with law.

20. The criminal Court's duty is to balance expedition with fairness. The object of the present order is to secure a trial that is both prompt and just prompt, so that the victim and society are not kept waiting, just, so that the accused is not condemned unheard.



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The learned Special Court shall proceed henceforth with firmness in schedule and fairness in opportunity.

21. In the result, this Criminal Original Petition is allowed, and the order dated 31.10.2025 passed in Cr.M.P.No.233 of 2025 in Spl.S.C.No.157 of 2020 on the file of the learned Special Court for Trial of Cases under the SC/ST (POA) Act, Theni, is set aside, subject to the following conditions:

(a) The petitioner/accused shall deposit a sum of Rs.10,000/- as costs to the credit of the District Legal Services Authority, Theni, within one week from the date of receipt of a copy of this order, and shall produce proof before the learned Trial Court.

(b) Upon such deposit, the learned Special Court shall recall P.W.1 to P.W.7 only for the purpose of cross-examination by the petitioner/accused.

(c) The learned Special Court shall fix continuous dates for cross-examination, and the petitioner/accused shall complete the



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cross-examination of P.W.1 to P.W.7 within a maximum period of fifteen (15) working days from the first date of recall, without seeking adjournment.

(d) No adjournment shall be granted at the instance of the petitioner/accused except for reasons of proven and unavoidable necessity, to be recorded in writing by the learned Trial Court.

(e) If the petitioner/accused fails to cross-examine any recalled witness on the scheduled date(s) without just cause, the learned Special Court shall be at liberty to close the cross-examination of that witness, and proceed further in accordance with law.

(f) The learned Special Court shall ensure that the recall and cross-examination are conducted in a manner consistent with the object of the SC/ST (POA) Act, ensuring that the process is not used for harassment, and shall regulate the proceedings by applying the usual norms of relevance and propriety.



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22. In view of the above direction and the time-bound framework, the prayer for stay of the entire proceedings is not granted in blanket terms. However, the learned Special Court shall defer further steps beyond the stage of P.W.7, until the cross-examination directed herein is completed or closed in terms of this order. Consequently, connected miscellaneous petition is closed.

02.01.2026

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

To

- 1.The Special Court for Trial of Cases
under SC/ST (POA) Act,
Theni.
- 2.The Deputy Superintendent of Police,
Theni Sub Division,
Theni district.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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