



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 22-07-2026**

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**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**CRL OP No. 19747 of 2026**

**AND**

**CRL MP NO. 13089 OF 2026**

1. Murugesan  
S/o. Velayutham,  
No.635, 18th Street,  
B.V.Colony, Vysarpadi,  
Chennai-600 039.
2. Sakthivel  
S/o. Shanmugaraj,  
No.Angal Street,  
Thirumalai Nagar,  
Ramapuram,  
Chennai-600 089.
3. Hemanathan  
S/o. Kasinathan  
No.1/17, 1400 Gandhi Nagar,  
Senthoor Puram Road, Kattupakkam,  
Chennai-600 056.

..Petitioner(s)

Vs

The Inspector of Police  
M4-Redhills Police Station,  
Chennai.  
(Crime No.852 of 2023)

..Respondent(s)

**PRAYER**

Criminal Original Petition filed under Sec.528 of B.N.S.S. 2023, praying to set aside the order dated 09.07.2026 passed in M.P.No.5 of 2026 in S.C.No.89 of 2024 on the file of the learned IV Additional District Judge, Tiruvallur at Ponneri.



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For Petitioner(s):

Mr. P.Rajkumar

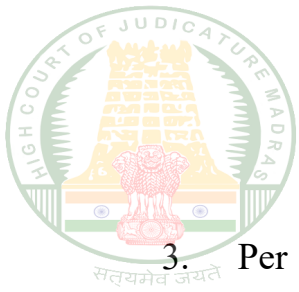
For Respondent(s):

Mr.R.Rajasekaran,  
Counsel for Government of Tamil Nadu  
(Criminal Side)

### **ORDER**

1. This Criminal Original Petition is filed challenging the order dated 09.07.2026 passed in MP No. 5 of 2026 in SC No. 89 of 2024 on the file of IV Additional District Judge, Tiruvallur at Ponneri.

2. The case is one under Sec. 302 of I.P.C. The trial is proceeded. On behalf the prosecution, P.W.14 one Dinesh was examined. He is a Village Assistant, who is said to have been a witness for confession statement leading to the recovery. When the prosecution has examined him in detail, the defence side has also cross examined him. The detailed cross examination of the defence, according to the learned counsel for the petitioners/accused, he was able to demolish. The case of the prosecution about the said person being a witness to the recovery. He has even answered, he was only staying down while the police alone went and got the materials. In order to overcome the lacuna, the prosecution has now filed the recall application, which ought not to have been permitted by the trial court. The learned counsel for the petitioner would also rely upon the judgment of the Hon'ble Supreme Court of India in ***Rajaram Prasad Yadav Vs. State of Bihar reported in (2013) 14 SCC 461.***



3. Per contra, the learned Counsel for Government of Tamil Nadu (Criminal

Side) would submit that only for the reasons mentioned in paragraph 5 of the petition, i.e. while examining the P.W.14, originally by oversight, questions were not put with reference to the confession statement and recovery relating to A2. The same witness on different occasions stood as a witness for recovery relating to A1 and A2. By sheer oversight, the said questions were not put on. Therefore, the opportunity is to be given. This is a serious case of murder and the petitioner has also got 15 previous cases pending against him.

4. I have considered the rival submissions made on either side perused the material records of the case.

5. As rightly contended by the learned counsel for the petitioner, the legal position in this regard is enunciated by the Hon'ble Supreme Court of India in **Rajaram Prasad Yadav** cited supra and it is essential to extract paragraph 16 and 17.5, which are relevant to the issue and as such it is extracted hereunder for ready reference:-

*“16. Again, in an unreported decision rendered by this Court dated 08.05.2013 in **Natasha Singh v. CBI**, reported at (2013) 5 SCC 741, where one of us was a party, various other decisions of this Court were referred to and the position has been stated as under in paras 15 and 16:-*



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*“15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Sec.311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Sec.311 Cr.P.C. must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as ‘any court’, ‘at any stage’, or ‘or any enquiry, trial or other proceedings’, ‘any person’ and ‘any such person’ clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of*



*the said witness is in fact, essential to the just decision of the case.*

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*17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.”*

6. Keeping the said principles in mind, if the present case is looked into, firstly it can be seen that P.W. 14 was a witness for recovery relating to A1 and A2. All the materials form part of the final report. Therefore, something new is not brought by the prosecution at a belated stage. Secondly the reason that is mentioned is “oversight”. The prosecution should be given the full opportunity to bring forth the truth, whatever the facts that turned out during the course of investigation, under any technicality, the facts which is already on record cannot be prevented from being exhibited. The only question is that whether this causes prejudice to the accused in a manner so as to vitiate the very fairness of the trial. If on the further examination, if any question is put to the witness, which would undo the cross examination already done, then it can be said that the re-examination is only to fill up the lacuna and whatever the answers elicited by cross examination is attempted to overcome. But, that is not the instant case, the trial court itself has clearly considered the purpose and in the last paragraph it has submitted that the petition is allowed only considering the facts that in the

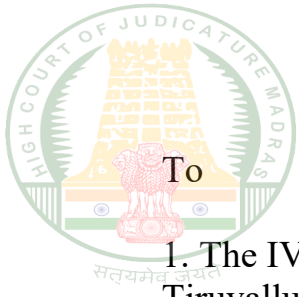


list of witnesses, P.W. 14 is also a witness for the confessional statement and the consequential seizure relating to A2. Therefore, even as per the principles laid down in the judgment of the Supreme Court of India cited supra, the fairness is being the object, which entails not only the interest of the accused, it should be the interest of the victim and the society. In view thereof, while not interfering with the order, it is only further clarified that when P.W.14 is further called for examination, the prosecution will be entitled to put questions strictly regarding the confessional statement and consequential seizure relating to A2 alone and will not in any manner dwell upon the questions that were made in the earlier cross-examination and elicit answers in respect of the other portions, which already the P.W. 14 has deposed and cross examined. With the aforesaid additional condition, this Criminal Original Petition stands disposed of. The accused will be entitled for cross-examination with reference to the additional questions that is being put to the witness. Consequently, connected Criminal Miscellaneous Petition is closed.

**22-07-2026**

Neutral Citation: Yes/No

RPP



To

1. The IV Additional District Judge,  
Tiruvallur at Ponneri.

2. The Inspector of Police,  
M4-Redhills Police Station,  
Chennai.

3. The Public Prosecutor,  
High Court, Madras.

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**D.BHARATHA CHAKRAVARTHY J.**

**RPP**

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