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CrI.O.P.No. 6706 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.6706 of 2025

1.S P R M Ramasamy, Managing Partner,
M/s.S P R K Agencies, No.799/E,
Mettupalayam Road, R R Layout,
R S Puram, Coimbatore 641 002 and also
at Door No.10/9, Maruthamalai Road,
Kalveerampalayam, Vadavalli,
Coimbatore 641 041.

2.M/s S P R K Agencies, rep by its Managing Partner
S P R M Ramasamy,
No.799/E, Mettupalayam Road, RR Layout,
R S Puram, Coimbatore 641 002.

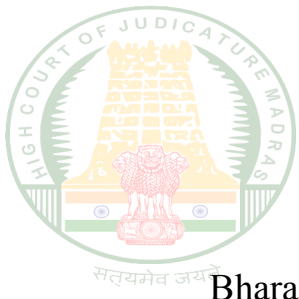
... Petitioners

Vs.

M/s Iqbal Traders, rep. by its Proprietor
Mr.M A Mohammed Iqbal, having office
at Old No.30, New No.57, Venkata Maistry
Street, Mannady, Chennai 600 001.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the



CrI.O.P.No. 6706 of 2025

Bharatiya Nagarik Suraksha Sanhita, 2023 to set aside the order in CrI.M.P.No.2173 of 2024 in C.C.No.1294 of 2018 dated 03.01.2025 passed by learned VIII Metropolitan Magistrate, George Town at Chennai.

For Petitioners : Mr.V.Jeyachandran

ORDER

This Criminal Original Petition has been filed challenging the order passed in CrI.M.P.No.2173 of 2024 in C.C.No.1294 of 2018 dated 03.01.2025 on the file of the learned VIII Metropolitan Magistrate, George Town at Chennai, thereby dismissing the application filed under Section 311 of Cr.P.C for recalling PW1 for cross examination.

2. The petitioners are the accused in a case filed on the basis of a private complaint lodged by the respondent under Section 138 of the Negotiable Instruments Act, 1881. The respondent was examined as PW1 and was cross-examined on 08.12.2022 and 16.03.2023. The prosecution evidence was closed on 18.07.2023. Thereafter, the petitioners engaged a new counsel, who filed an application under



CrI.O.P.No. 6706 of 2025

Section 311 Cr.P.C seeking to recall PW1 for further cross-examination.

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The Trial Court dismissed the application on the ground that PW1 had already been fully cross-examined and the present petition was intended only to delay the trial proceedings. Hence, this petition.

3. The learned counsel for the petitioners contended that the earlier counsel engaged by the petitioners failed to put vital questions to PW1 during cross-examination, which are essential for a just adjudication of the matter. Hence, the petitioners engaged a new counsel, who sought to recall PW1 for further cross-examination. In support of this contention, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of ***Varsha Garg v. The State of Madhya Pradesh and Others***, reported in, ***2022 LiveLaw (SC) 662***, wherein it was held that:

“

32. The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory



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CrI.O.P.No. 6706 of 2025

provision goes to emphasize that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest.

.....

42 The Court is vested with a broad and wholesome power, in terms of Section 311 of the CrPC, to summon and examine or recall and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute bar. This Court in Zahira Habibulla H. Sheikh (supra) while dealing with the prayers for adducing additional evidence under Section 391 CrPC at the appellate stage, along with a prayer for examination of witnesses under Section 311 CrPC explained the role of the court, in the following terms:

"43. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the



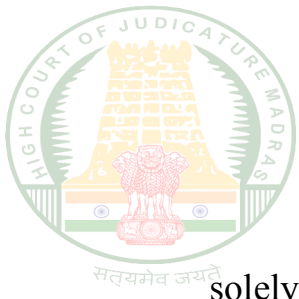
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CrI.O.P.No. 6706 of 2025

proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.”

4. On perusal of the records and submissions made, it is evident that PW1 was already cross-examined in full on 08.12.2022 and 16.03.2023. The present application under Section 311 Cr.P.C has been filed only after the conclusion of prosecution evidence and defence witness examination. This Court finds that the recall petition was filed



CrI.O.P.No. 6706 of 2025

WEB COPY

solely on the ground of change of counsel, without demonstrating any substantial or compelling reason warranting further cross-examination.

The purpose of Section 311 Cr.P.C is to ensure that justice is not sacrificed due to procedural lapses, but it cannot be used as a tool to fill up lacunae in the defence or to protract the trial unnecessarily. In the present case, there is no new material or specific omission pointed out that would necessitate recalling PW1, especially when the witness was already cross-examined over two dates. The reliance placed on *Varsha Garg* case (as stated supra) is not applicable in the present facts, as that case involved a situation where the additional evidence was essential for a just decision, which is not the case here. That apart, the Calendar Case is of the year 2018, and the petitioners have been filing applications only to delay the proceedings by repeatedly changing counsel. Hence, the Trial Court rightly rejected the application, and this Court finds no illegality or irregularity in the impugned order.

5. In view of the above, this Criminal Original Petition stands



CrI.O.P.No. 6706 of 2025

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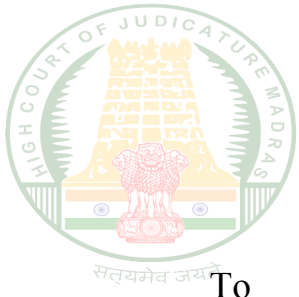
dismissed. However, the Trial Court is hereby directed to complete the trial in C.C.No.1294 of 2018 within a period of eight weeks from the date of receipt of a copy of this order.

10.03.2025

Neutral citation : Yes/No
Speaking/non-speaking order
shk

G.K.ILANTHIRAIYAN, J.

shk



Crl.O.P.No. 6706 of 2025

To
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1. The VIII Metropolitan Magistrate, George Town at Chennai.
2. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.6706 of 2025

10.03.2025