



Crl. O.P. No. 10491 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 07.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl. O.P. No. 10491 of 2025

and

Crl. M.P. No. 7011 of 2025

NAG. Narayan Prasad

... Petitioner

Vs.

The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai.

... Respondent

Criminal Original Petition is filed under Section 528 of B.N.S.S., to set aside the order passed in the Crl.M.P.No.771 of 2025 in C.C.No.244 of 2021 on the file of the II Additional Special Judge, Special Court under Exclusive Trial of Case under NDPS Act, Chennai.

For Petitioner : Mr. G. Murugendran

For Respondent : Mr. N.P. Kumar,
Special Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the order passed in Crl. M.P. No. 771 of 2025 in C.C. No. 244 of 2024 on the file of the II Additional Special Judge, Special Court under Exclusive

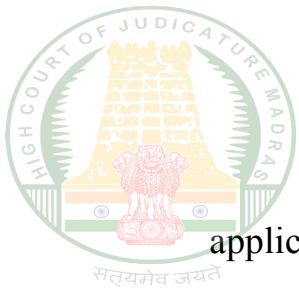


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Trial of Case under NDPS Act, Chennai, thereby allowed the application filed under Section 311 of Cr.P.C., to recall two witnesses for examination.

2. The petitioner is an accused and facing charges for the offences punishable under Sections 8(c) r/w 20(b) (ii) (C), 28 and 29 of NDPS Act in C.C. No. 244 of 2021. When the matter was posted for arguments, the respondent filed application under Section 311 of Cr.P.C., to add two witnesses, by name Ranjit Singh and U. Ismail in the list of witnesses as witnesses No.8 and 9 and to issue summons. The said application was allowed.

3. Learned counsel for the petitioner would submit that, though Section 311 of Cr.P.C., permits to add additional witnesses, it should only be allowed if it is really required for the trial Court to meet the ends of justice. He further submits that the statement of witnesses to be examined by the prosecution have already been marked through P.W.2. Infact, one of the witness, Mr. Ismail, even before filing the application to recall, died on 28.12.2024. The recall petition was filed on 13.02.2025 without even verifying whether witness is alive or not. The respondent filed



application and the same was also mechanically allowed.

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4. Learned Special Public Prosecutor for the respondent would submit that in order to corroborate the statement recorded under Section 67 of NDPS Act, the prosecution filed application to examine them. Though their statements were marked through P.W.2, the specific contention taken by the petitioner before the trial Court is that, the said statement cannot be taken into consideration since their statements were marked through the person who deposed under Section 67 of NDPS Act.

5. Learned counsel for the petitioner also rely upon the judgment of the Hon'ble Supreme Court in ***Swapan Kumar Chatterjee v. Central Bureau of Investigation*** reported in ***(2019) 14 SCC 328***, wherein, the relevant paragraphs are extracted hereunder:

“10. This first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person



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already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

6. Thus, it is clear that though the trial Court has power to even recall witnesses for re-examination or for further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case.



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7. In this case, the trial Court ought not have exercised the power since the examination of two persons is nothing but clear abuse of process of law since their statements were already marked through P.W.2.

8. That apart, one of the witness, U.Ismail died on 28.12.2024. Without even knowing the said fact, the respondent filed application to examine the said person under Section 311 of Cr.P.C., on 13.02.2025. After allowing the said application, the respondent filed a memo to that effect.

9. Therefore, this finds infirmity in the order passed by the trial Court and accordingly, the Crl.M.P.No.771 of 2025 in C.C. No. 244 of 2024 on the file of the II Additional Special Judge, Special Court under Exclusive Trial of Case under NDPS Act, Chennai is set aside.

10. The trial Court is directed to proceed with the trial. It is also made clear that the statement of witnesses to be examined by the prosecution have been already marked through P.W.2 and it can be taken into consideration by the trial Court.



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11. As a result, this Criminal Original Petition is allowed.

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Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
AT

To

1.The II Additional Special Judge,
Special Court under Exclusive Trial of Case
under NDPS Act, Chennai.

2.The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai.



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G.K.ILANTHIRAIYAN,J.

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