



Crl.OP(MD)No.3910 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2025

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.3910 of 2024

and

Crl.M.P.(MD)No.13756 of 2024

Abin @ Abinraj

... Petitioner

Vs.

The State of Tamilnadu,
Rep. by, the Inspector of Police,
Adirampattinam Police Station,
Thanjavur District.
(Cr.No.61 of 2018)

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records and set aside the order passed in Crl.M.P.No.533 of 2023 on the file of the learned III Additional District & Sessions Court, Thanjavur at Pattukottai, dated 20.12.2023, by allowing this petition.

For Petitioner : Mr.P.Kannathasan

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor



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the petition was belated and intended to protract the proceedings.
The correctness of such reasoning now falls for consideration.

Prosecution Case:

4. The prosecution alleges that the petitioner and other accused formed an unlawful assembly and committed the murder of the deceased. A case was registered in Crime No.61 of 2018 for offences under Sections 147, 148, 506(ii), 302 r/w 149 IPC, and the matter was taken on file as S.C.No.95 of 2019.

5. During trial, 15 witnesses were examined on the side of the prosecution, and the remaining official witnesses including the Investigation Officer and the Post-Mortem Doctor were yet to be examined.

Petitioner's Case Before the Trial Court:

6. The petitioner filed Crl.M.P.No.533 of 2023 under Section 311 Cr.P.C., 1973, to recall PW-1 and PW-4, contending that:
(i)earlier defence counsel did not confront the witnesses with vital



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contradictions; (ii)PW-1 and PW-4 are star eye-witnesses; (iii)failure to put contradictions would gravely prejudice the defence; and that (iv)recall was sought not to delay the proceedings but to secure a fair trial.

7. The Trial Court dismissed the petition on 20.12.2023, holding that the cross-examination was already elaborate and that the petition was intended to drag on the trial.

Grounds before this Court:

8.The petitioner challenges the order primarily on the following grounds:

(i) The learned Trial Court failed to appreciate that Section 311 Cr.P.C., 1973, is meant to secure justice, not to punish innocent errors of counsel.

(ii) The Petitioner has changed counsel and now wishes to confront witnesses with material contradictions, without which the defence would be crippled.



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(iii) The learned Trial Court failed to record any finding on whether the proposed questions were “essential for a just decision”.

(iv) Dismissal of the application violates the petitioner's fundamental right to a fair trial under Article 21 of the Constitution.

Submissions:

9. The learned counsel for the petitioner submitted that, PW-1 and PW-4 are crucial eye-witnesses whose testimony is the backbone of the prosecution case. The earlier counsel did not put essential contradictions and omissions from the FIR, medical records, and statements under Section 161 Cr.P.C., 1973. The petitioner does not seek a roving enquiry or repetition of questions; only specific, relevant contradictions are to be elicited. The defence is willing to bear all expenses and undertake to complete cross-examination on a fixed date.

10. It is argued that the impugned order is mechanical and contrary to settled principles in ***Natasha Singh v. CBI***¹; ***Himanshu Singh Sabharwal v. State of M.P.***².

¹ (2013) 5 SCC 741

²(2008) 3 SCC 602



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11. The learned Public Prosecutor submitted that, PW-1 and PW-4 have already been cross-examined exhaustively. The trial is at the argument stage; prosecution evidence and defence evidence are completed. Recall at this stage would amount to reopening the trial and cause prejudice to the prosecution. The petitioner had due opportunity and cannot be permitted to fill lacunae. The learned Public Prosecutor further relied on the learned Trial Court's finding that no valid or specific reason was assigned for recall.

12. Heard the learned counsels on either side and carefully perused the materials available on record.

Analysis:

13. Section 311 Cr.P.C., 1973, has two limbs: (i) Discretionary: “may” summon a witnessing Mandatory: “shall” summon a witness if the evidence is essential for a just decision

14. As held in *Rajaram Prasad Yadav* (supra), the power must be exercised to prevent failure of justice, ensure the correctness of the decision, and uphold the right to fair trial.



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15. The right to effectively cross-examine a witness is integral to Article 21. Even if a witness has been previously cross-examined, recall is permissible if the Court is satisfied that further questioning is necessary to elicit truth. Courts have repeatedly held that procedural constraints cannot override substantive justice.

Application to Present Case

16. In the present case, the learned Trial Court dismissed the petition solely on the length of earlier cross-examination, pendency of trial at an advanced stage and apprehension of delay.

17. The learned Trial Court did not examine (i)whether the proposed contradictions are material (ii)whether confronting PW-1 and PW-4 with those contradictions is essential for a just decision and (iii)whether refusal would prejudice the defence irreparably.

18. This approach is inconsistent with the mandatory obligation under the second limb of Section 311 Cr.P.C., 1973, and the test laid down in **Natasha Singh v. CBI**³ and **Rajendra Prasad**

³ (2013) 5 SCC 741



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v. Narcotic Cell⁴. The fact that the petitioner has changed counsel is not, by itself, a ground for recall, but it is also not a ground for denial when the defence demonstrates that vital omissions were not confronted.

19. In a case involving Section 302 IPC, where life and liberty of the accused are at stake, the Court must lean towards allowing evidence which aids the discovery of truth. This Court finds that the proposed cross-examination is not intended to fill lacunae, but to test the veracity of the star witnesses on material contradictions. Such an exercise is essential to ensure a fair trial.

20. Prejudice to the prosecution can be addressed by fixing a strict timeframe, permitting only limited, relevant questioning and directing payment of witness batta by the petitioner. Therefore, the impugned order cannot stand.

21. For all the foregoing reasons, this Court is satisfied that the recall of PW-1 and PW-4 is essential for the just decision of the case, and refusal would result in denial of fair trial.

⁴ (1999) 6 SCC 110



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22. Accordingly this Criminal Original Petition is allowed. The order dated 20.12.2023 in CrI.M.P.No.533 of 2023 passed by the learned III Additional District & Sessions Judge, Thanjavur at Pattukottai is set aside.

23. The learned Trial Court is directed to:

- (i) Recall PW-1 and PW-4 for limited further cross-examination confined only to material contradictions indicated in the recall petition.
- (ii) Fix a single effective date for their appearance.
- (iii) Complete cross-examination on the same day without adjournment.
- (iv) Ensure that the petitioner deposits witness batta in advance.



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24. The learned Trial Court shall thereafter proceed with the trial unaffected by this order, and conclude the same expeditiously. Consequently, connected miscellaneous petitions, if any, stand closed.

10.12.2025

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

To

- 1.The III Additional District &
Sessions Court,
Thanjavur at Pattukottai.
- 2.The Inspector of Police,
Adirampattinam Police Station,
Thanjavur 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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