



CrIOP(MD)No.11484 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.08.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CrIOP(MD)No.11484 of 2025

K.Senthilkumar

... Petitioner

Vs.

The State of Tamil Nadu rep by
DCB, ALGSC, Theni.
[Crime No.20 of 2024]

...Respondent

Prayer : Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, to set aside the order passed in Judicial Magistrate Court, Uthamapalyam in MP.No.14 of 2025 in CC.No.338 of 2023, dated 23.06.2025.

For Petitioner : Mr.S.Ramsundarvijayraj

For Respondent : Mr.A.S.Abul Kalaam Azad,
Government Advocate (Crl Side)

ORDER

The petitioner is the 4th accused in CC No. 338 of 2023 on the file of the learned Judicial Magistrate, Uthamapalayam facing trial for charges under Sections 120 (B), 420, 465, 468 and 471 of the IPC. He has filed an application under Section 311 CrPC to re-call the witness

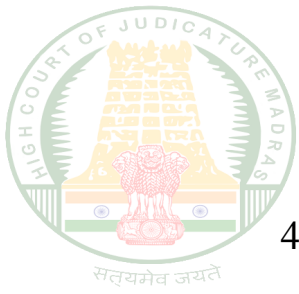


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PW2 for cross examination, which was dismissed by order dated 23.06.2025. As against the same, this petition has been filed.

2.The learned counsel for the petitioner submits that PW2 was examined in chief on 11.11.2024. The counsel for the petitioner failed to cross-examine PW2 on the said date, since they were in need of certain documents. Therefore, the case was posted to 17.03.2025 and on that day also they were unable to cross examine PW2 due to certain difficulties in understanding all the documents. He further submits that PW2 is the main witness in this case to bring out certain facts on his side and therefore he prays that this petition be allowed.

3.The learned Government Advocate (Crl Side) on instructions submits PW1 and PW2 were examined in chief on 11.11.2024 and PW1 was further examined in chief on 17.03.2025. PW2 was also present on that day. He further submits that this court in CrIOP(MD)No.1968 of 2025 vide order dated 04.02.2025 has directed to conclude the trial in CC No. 338 of 2023 within a period of four months.

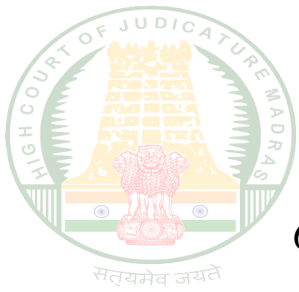


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4.This court has considered the rival submissions made and perused

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5.Perusal of the records show that the FIR in Crime No.20 of 2014 was registered in the year 2014 and the final report was taken on file in CC.No.338 of 2023. PW1 and PW2 were examined in chief on 11.11.2024. However the petitioner has not cross examined them on that day itself. PW1 was further examined in chief on 17.03.2025 and PW2 was also present on that day. This time also the petitioner has not cross examined them. It also has to be noted that the petitioner has filed a petition to recall PW1 on 14.04.2025 for the purpose of cross examination, which was allowed by the trial court by order dated 21.05.2025. Thereafter the petitioner has filed an application to re-call PW2 for the purpose of cross examination on 16.06.2025 and it was dismissed on 23.06.2025 on the ground that the petitioner had already filed an application to re-call PW1 alone in the month of May 2025 and also there is a direction from this court to conclude the trial within a period of four months.

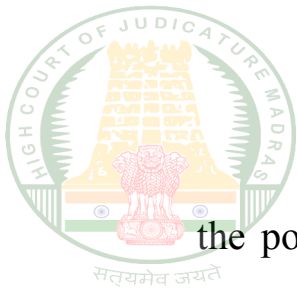


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6. Section 311 of CrPC deals with the power of the court to summon and examine any person as witness, if the evidence of such person is essential for just decision of the case. The object of this provision has been discussed by the Hon'ble Supreme Court in ***Rajaram Prasad Yadav vs. State of Bihar*** reported in (2013) 14 SCC 461 wherein it has been held as follows:

“14. A conspicuous reading of section 311 CrPC would show that widest of the powers have been invested with the courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression “any” has been used as a prefix to ‘court’, “inquiry”, “trial”, “other proceeding”, “person as a witness”, “person in attendance though not summoned as a witness”, and “person already examined”. By using the said expression “any” as a prefix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the court was only in relation to such evidence that appears to the court to be essential for the just decision of the case.”

7. The power to recall and re-examine witnesses is an essential one for just decision on the case. But this provision should be viewed from



the point of view of accused as well as the victims. In **State (NCT of Delhi) v. Shiv Kumar Yadav** reported in (2016) 2 SCC 402, the Hon'ble Supreme Court has observed as follows:

“...11. It is further well settled that fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the victim and the society. In the name of fair trial, the system cannot be held to ransom. The accused is entitled to be represented by a counsel of his choice, to be provided all relevant documents, to cross-examine the prosecution witnesses and to lead evidence in his defence. The object of provision for recall is to reserve the power with the court to prevent any injustice in the conduct of the trial at any stage. The court, for valid reasons, feels that injustice is caused to a party. Such a finding, with reasons, must be specifically recorded by the court before the power is exercised. It is not possible to lay down precise situations when such power can be exercised. The legislature in its wisdom has left the power undefined. Thus, the scope of the power has to be considered from case to case.”

8. With regard to the cross examination of witnesses, the Hon'ble Supreme Court in **Vinoth Kumar vs. State of Punjab** reported in 2015 (1) MLJ (Crl.) 288, has observed as follows :



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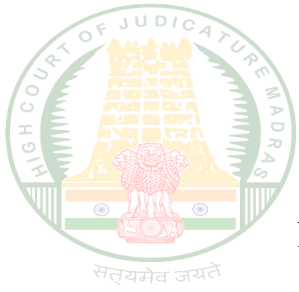


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“41.....The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in- chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial....”

9.In ***Rajaram Prasad Yadav vs. State of Bihar*** reported in (2013) 14 SCC 461, the Hon’ble Supreme Court has held as follows:

“23... n) The power under section 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 care, caution and circumspection....”



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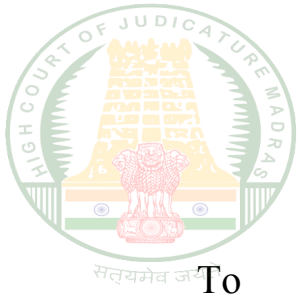
10. In the present case, the cross-examination has not been conducted on the same day when PW2 was examined in chief on 11.11.2024. Furthermore, when the case was adjourned to 17.03.2025 also the petitioner failed to cross examine PW2. Further he has filed a petition to recall PW1 alone in the month of May 2025 and subsequently, the petitioner has filed an application to recall PW2 on 16.06.2025.

11. Even though the FIR in this case was registered in the year 2014 and the final report was taken on file in the year 2023, the trial is yet to be completed in this case. Further this court in CrIOP(MD)No.1968 of 2025 vide order dated 04.02.2025 has directed to conclude the trial in CC No. 338 of 2023 within a period of four months.

12. In view of the above discussion and in view of the decisions of the Hon'ble Supreme Court cited supra, the trial court is justified in rejecting the petition filed by the petitioner to recall PW2. Therefore, this court is not inclined to entertain this petition and accordingly, this petition is dismissed.

29.08.2025

DSK



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To
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- 1.The Judicial Magistrate,
Uthamapalyam.
- 2.The Inspector of Police,
DCB, ALGSC, Theni.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI,J

DSK

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