



Crl.R.C(MD)No.1327 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.10.2025**

CORAM

THE HONOURABLE **MR.JUSTICE SHAMIM AHMED**

CRL.R.C.(MD)No.1327 of 2025

and

Crl.M.P.(MD)No.14299 of 2025

S.Savarimuthu,
S/o.Soosai Michael,
24, Soosaiyappar North Car Street,
Panagudi, Radhapuram Taluk,
Tirunelveli – 627 111.

... Revision Petitioner

vs.

1.Narayanan (Died),
S/o.Kandasami,
40A, South Car Street,
Panagudi, Radhapuram Taluk,
Tirunelveli.

2.N.Kanthasamy,
S/o.Narayanan,
40A, South Car Street,
Panagudi,
Radhapuram Taluk,
Tirunelveli – 627 111.

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, 2023, to call for the records and set aside the order passed by the learned Additional District Munsif, Valliyoor in Crl.MP.No.31 of



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2025, dated 04.09.2025 in C.C.No.160 of 2023 by allowing this Revision Petition and to direct the Trial Court to recall the PW1 at the earliest.

For Revision Petitioner : Mr.Aayiram K.Selvakumar

ORDER

Heard Mr.AayiramK.Selvakumar, learned Counsel appearing for the Revision Petitioner. Since the Criminal Revision Petition is disposed of at the admission stage itself and in view of the order to be passed in this petition, notice to the Respondent is dispensed with.

2. This Criminal Revision Petition has been filed by the Revision Petitioner to set aside the order passed by the learned Additional District Munsif, Valliyoor in Crl.MP.No.31 of 2025, dated 04.09.2025 in C.C.No.160 of 2023 by allowing this Revision Petition and to direct the Trial Court to recall the PW1 at the earliest.

3.The Revision Petitioner is the accused and the Respondent is the



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complainant. The Revision Petitioner is facing trial for the offence under Section 138 of the Negotiable Instruments Act. The complainant was examined in chief as PW.1 and he was also cross examined. Contending that since some important questions were omitted to be asked during the cross examination of PW.1, PW.1 has to be recalled, the Revision Petitioner has filed CrI.MP.No.31 of 2025 before the Trial Court, under Section 311 of Cr.PC to recall PW.1 for further cross examination. The said petition was opposed by the Respondent herein by filing a counter affidavit therein, contending that the said Petition to recall PW.1 is false and frivolous one. The learned Additional District Munsif, Valliyoor by impugned order dated 04.09.2025 in CrI.MP.No.31 of 2025 in C.C.No. 160 of 2023 had dismissed the said Petition to recall. Aggrieved against the same, this Criminal Revision Case has been filed by the Revision Petitioner.

4. According to the Revision Petitioner, some important questions, which are highly necessitated to establish the innocence of the Revision Petitioner, were omitted to be asked during the cross examination of PW. 1 and hence, to meet the ends of justice, recalling of PW.1 for further



cross examination is necessary.

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5. For better appreciation, Section 311 of Cr.PC reads as under:-

“311. Power to summon material witness, or examine person present: Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

6. Section 311 of Cr.PC operates in two parts, the first part clothes the Court with a power to summon or examine any person in attendance or recall or re-examine any person already examined. The second part mandates that the Court shall summon and examine or recall and re-examine such person, if his evidence appears to be essential to the just decision of the case. Thus, first part of Section gives a discretionary power to the Court to summon any person as a witness or to recall or re-examine the person already examined. Such a course of action is only permissible if the Court is satisfied that the prayer to recall and re-examine the witness is not made to fill up the lacuna and that the non-summoning of the witnesses would cause a serious prejudice to the



accused.

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7. The Honourable Supreme Court, in **2013 (14) SCC 461 (Rajaram Prasad Yadav Vs. State of Bihar)**, was pleased to summarise the principles to be borne in mind, while exercising the power under Section 311 Code of Criminal Procedure , as under:-

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.



e) 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.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it



would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

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. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

8. The Honourable Supreme Court, by its judgement and order, ***dated 28.09.2024, in Special Leave to Appeal (Criminal) No.3910 of 2024, (Neha Begum and Others Vs. State of Assam)*** was pleased to observe, as under:-



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“9. Apparently thus, the prayer made by the petitioners in the application to recall and re-examine the witnesses was nothing but an attempt to fill in the lacuna. There is nothing on record to suggest that non summoning of the witnesses for further cross examination could cause grave prejudice the accused and that such a cause of action was essential for a just decision of the case. ”

9. In this case, the Respondent was cross examined as early as on 01.12.2021 and subsequently, further witnesses were examined on the side of the Respondent. Later, DW.1 to 5th Defendant were examined in chief on the side of the accused. The case was posted for arguments on 12.07.2024 and the argument on the side of the complainant was advanced the case was posted for defense side arguments on 03.07.2025. At that stage, the present subject application seeking to recall PW.1 was filed before the Trial Court by the Revision Petitioner. The only reason assigned by the Revision Petitioner to recall PW.1 is that some important questions, which are highly necessitated to establish the innocence of the Revision Petitioner, were omitted to be asked during the cross examination of PW.1 and hence, to meet the ends of justice, recalling of PW.1 for further cross examination is necessary.



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10. On a perusal of the subject application filed by the Revision Petitioner before the trial Court by invoking the provisions under 311 of CrPC, this Court finds that other than a vague aspersion that some important questions were omitted to be asked in the cross examination of PW.1, no such specific ground was forthcoming by or on behalf of the Revision Petitioner, which could be considered to be a valid ground for the trial Court to invoke the power under Section 311 CrPC.

11. Apparently thus, the prayer made by the Revision Petitioner in the application to recall and re-examine PW.1 was nothing, but an attempt to fill up the lacuna. There is nothing on record to suggest that non summoning of the witnesses for further cross examination could cause grave prejudice to the Revision Petitioner/accused and that such a cause of action was essential for a just decision of the case.

12. On a perusal of the impugned order of the Trial Court, this Court finds that the Trial Court has rightly held that the witness cannot be recalled under Section 311 of Cr.PC to fill up the lacuna or on vague, unsubstantiated basis and when nothing on record to suggest that non



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summoning of the witnesses for further cross examination could cause grave prejudice to the accused and that such a cause of action was essential for a just decision of the case and accordingly, dismissed the Petition under Section 311 of Cr.PC. Hence, the impugned order does warrant any interference by this Court, as there is no illegality or perversity in the same.

13. In the result, this Criminal Revision Case is **dismissed**. There is no order as to costs. Consequently, the connected Criminal Miscellaneous Petition is closed. The file is consigned to record.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
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14.10.2025

To:

1. The Additional District Munsif, Valliyoor.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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SHAMIM AHMED, J.

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Order made in
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