



Crl.OP(MD)No.22064 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.22064 of 2025

and

Crl.M.P.(MD)No.18990 of 2025

Suresh Kannan

... Petitioner

Vs.

The State of Tamilnadu,
Rep. by, the Inspector of Police,
Central Crime Branch,
Sivagangai District.
(Cr.No.1 of 2014)

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records and set aside the order dated 01.11.2025 passed in Crl.M.P.No.7 of 2024 in S.C.No.47 of 2016 on the file of the learned Additional District & Sessions Court, Sivagangai District.

For Petitioner : Mr.V.Kathirvelu,
Senior Counsel,
For Mr.K.Prabhu

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



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ORDER

This Criminal Original Petition is filed by the third accused in S.C.No.47 of 2016 on the file of the learned Additional District and Sessions Judge, Sivagangai, invoking the inherent jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 482 of the Code of Criminal Procedure), seeking to set aside the order dated 01.11.2025 passed in Crl.M.P.No.7 of 2024, whereby the learned Trial Court allowed a petition filed under Section 311 Cr.P.C., 1973, to recall and further examine P.W.1 and P.W.2. The petitioner has also sought for an order of stay of all further proceedings in S.C.No.47 of 2016 till the disposal of the present petition.

Case of the prosecution:

2. The petitioner is arrayed as A3 in S.C.No.47 of 2016. The prosecution case, in brief, is that owing to prior enmity, the accused, who are nine in number, unlawfully assembled, armed with deadly weapons, attacked one Saravanan and one Sivagami and caused injuries resulting in their death on the spot. On the basis of the complaint lodged, a case was registered in Crime No.255 of 2015 for



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offences under Sections 1206(b), 294(b), 114, 147, 148, 341, 302, 34, 506(ii) and 149 I.P.C., and later altered to Sections 147, 148, 294(b), 302 and 120-B I.P.C. After completion of investigation, final report was filed and the case was taken on file as S.C.No.47 of 2016.

3. It is not in dispute that the trial has substantially progressed. As seen from the impugned order, the prosecution has cited 52 witnesses. Prosecution witnesses up to P.W.51 have been examined and the trial is at the fag end. P.W.1 Narayanan was examined in chief and cross-examined on 12.05.2021. P.W.2 Balaji was examined in chief and cross-examined on 27.08.2021. In the year 2024, the *de-facto* complainant / prosecution moved Crl.M.P.No.7 of 2024 before the learned Trial Court under Section 311 Cr.P.C., 1973, seeking recall of P.W.1 and P.W.2 for the limited purpose of further examination regarding the “case properties”, namely, the weapons and other material objects involved in the occurrence, which had allegedly been omitted to be put to them by the then Special Public Prosecutor.



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4. The learned Trial Court, by order dated 01.11.2025, allowed the petition, recording, *inter alia*, that P.W.1 and P.W.2 are eye-witnesses to the occurrence, the weapons (aruval and wooden logs) and other material objects were already part of the case, seized during the investigation and produced before the Court by way of Form-95, the omission to question P.W.1 and P.W.2 regarding these material objects was inadvertent, and for a just and fair adjudication, all relevant evidence including in relation to the case properties should be brought on record.

5. While allowing the petition, the learned Additional District and Sessions Judge imposed a specific condition that the prosecution shall produce P.W.1 and P.W.2 on the next hearing date i.e., 01.12.2025, and complete their examination on that date itself, and that no further opportunity would be granted thereafter. Aggrieved by the said order, the present petition has been filed by A3.



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Submissions:

6. The learned counsel for the petitioner contended in substance as follows:

P.W.1 and P.W.2 were examined in the year 2021 and cross-examination was also completed. After a lapse of more than three years, the prosecution has filed the present petition only to fill up the lacuna in its case and to protract the trial. The petition filed under Section 311 Cr.P.C., 1973, does not disclose in clear terms either the nature of the alleged mistake committed by the then Public Prosecutor or the specific material objects proposed to be marked through P.W.1 and P.W.2. A bald plea that some mistake was committed cannot be a ground to recall witnesses. The main trial has practically concluded. Most of the witnesses have been examined. The prosecution, having had sufficient opportunity to elicit all material facts in 2021, cannot be permitted, at this distance of time, to recall key witnesses and improve its case to the prejudice of the accused. The power under Section 311 Cr.P.C. cannot be invoked for the purpose of filling up omissions or curing defects in the prosecution case. The present attempt is precisely of that nature and, therefore, the trial Court ought to have dismissed the petition.



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The impugned order, therefore, suffers from illegality and arbitrariness and warrants interference under Section 528 BNSS / Section 482 Cr.P.C.

7. Per contra, learned Government Advocate (Criminal Side), appearing for the first respondent-State, supported the impugned order and submitted that P.W.1 and P.W.2 are eye-witnesses to the occurrence. At the time of their examination in 2021, the then Special Public Prosecutor inadvertently omitted to put questions with respect to the weapons (aruval and wooden logs) and other material objects used in the occurrence, though those material objects were already seized and produced before Court. The material objects in question are not new evidence being introduced for the first time at this stage; they have all along been in the custody of the Court, having been seized during investigation on the basis of the disclosures made by the accused, and produced under appropriate seizure forms. Section 311 Cr.P.C. confers wide powers upon the Court to summon any witness or recall and re-examine any witness at any stage of the trial, if such evidence appears to be essential to



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the just decision of the case. The provision is intended to advance the cause of justice and not to thwart it.

8. The learned Trial Court has exercised this power judiciously and has also safeguarded the interest of the accused by confining the recall and examination to a specified date and by directing that there shall be no further adjournment thereafter. The accused will have full opportunity to cross-examine the witnesses on the limited aspect for which they are recalled. In the facts and circumstances, there is no abuse of process warranting interference with the order under challenge.

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

Point for determination:

10. In the light of the rival submissions and the materials placed, the short question that arises for consideration is whether the order dated 01.11.2025 passed by the learned Additional District and Sessions Judge, Sivagangai, in Crl.M.P.No.7 of 2024 under



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Section 311 Cr.P.C., 1973, recalling P.W.1 and P.W.2 for further examination, calls for interference by this Court in exercise of its inherent jurisdiction under Section 528 BNSS / Section 482 Cr.P.C., 1973?

Analysis:

11. Section 311 Cr.P.C., 1973, enables any Court, at any stage of any inquiry, trial or other proceeding, to summon any person as a witness or to recall and re-examine any person already examined, and further mandates that the Court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

12. It is well settled by a catena of decisions of the Hon'ble Supreme Court that the power under Section 311 Cr.P.C., 1973, is very wide and is to be exercised to achieve a just decision, the determinative test is whether the evidence sought to be adduced is essential for a just and fair adjudication, the provision cannot be used to fill up lacunae in the prosecution case or to enable a party to patch up weaknesses, at the same time, mere delay or the fact that



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certain evidence could have been adduced earlier, by itself, does not preclude the Court from summoning or recalling a witness, if the Court is satisfied that such evidence is necessary to arrive at the truth.

13. The inherent power of this Court under Section 528 BNSS / Section 482 Cr.P.C., 1973, is to be exercised sparingly, to prevent abuse of process of Court and to secure the ends of justice. Interference with discretionary orders of the learned Trial Court passed under Section 311 Cr.P.C., 1973, is warranted only where the discretion has been exercised arbitrarily, capriciously or contrary to law.

14. A perusal of the impugned order would reveal that the petition under Section 311 Cr.P.C., 1973, was filed to recall P.W.1 Narayanan and P.W.2 Balaji for further examination in relation to the “case properties”, namely, the weapons (aruval and wooden logs) and other material objects used in the commission of the offence and seized by the investigating agency. The learned Trial Court has recorded that the material objects were already seized during



investigation in the year 2013/2014 and produced before the Court under Form-95, and that they have all along remained in the custody of the Court as case properties. Thus, the prosecution does not seek to introduce any new material collected subsequent to the trial, rather, it seeks to get certain already-available material objects formally marked through witnesses, which was omitted at the earlier stage.

15. In these circumstances, the apprehension of the petitioner that the prosecution is attempting to “improve” its case by introducing new material is not borne out on the facts placed before this Court.

16. It is true that P.W.1 and P.W.2 were examined in the year 2021 and that the petition to recall them was filed only in the year 2024, when the trial had substantially progressed and more than fifty witnesses had been examined. Ordinarily, such belated applications are to be scrutinised with greater care, to ensure that the power under Section 311 Cr.P.C., 1973, is not misused for delaying the proceedings or for undoing tactical lapses.



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17. At the same time, delay *per se* is not a bar to the exercise of power under Section 311 Cr.P.C., 1973. The crucial test is whether the evidence that is sought to be brought on record is essential for a just decision. The nature of the case here is a double-murder trial, involving serious charges under Sections 147, 148, 294(b), 302 and 120-B I.P.C., amongst others. Where the material objects allegedly used in the commission of the offence stand seized and are already before the Court, their proper marking and the evidence connecting them with the occurrence and witnesses can hardly be described as trivial or unnecessary.

18. The learned Trial Judge has specifically recorded that P.W. 1 and P.W.2 are eye-witnesses to the occurrence and that, for reasons described as inadvertent and not deliberate, questions regarding the case properties were not put to them at the earlier stage. The learned Trial Court has further noted that the main case has been pending for nearly ten years and that it is in the interest of justice that all material aspects, including the case properties, be brought on record before the case is finally decided.



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19. This Court is unable to accept the contention of the petitioner that the recall in the present case is merely for filling up lacunae. The omission complained of pertains to a foundational aspect of the prosecution, namely, linking the already-seized weapons and other material objects with the ocular version of key eye-witnesses. Such evidence, by its very nature, goes to the root of the matter and has a direct bearing on the appreciation of the prosecution case as a whole.

20. In trials of serious offences, the Court cannot lose sight of its duty to arrive at the truth. The anxiety to protect the rights of the accused cannot extend to the point of disabling the Court from considering material evidence which is already available on record and which, for purely inadvertent reasons, was not formally proved through a witness.

21. The next question is whether the impugned order causes prejudice to the accused. In this regard, it is significant that the learned Trial Court has allowed the petition under Section 311 Cr.P.C., 1973, subject to stringent conditions, it has directed that



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P.W.1 and P.W.2 shall be produced and examined on the next hearing date, namely, 01.12.2025, it has further directed that if the witnesses are not examined on that date, no further opportunity would be granted to the prosecution. The accused will, in any event, have a full and fair opportunity to cross-examine P.W.1 and P.W.2 with regard to any fresh or additional matters spoken to by them during the recall. Therefore, the right of the accused to effectively cross-examine and defend themselves is neither curtailed nor diluted by the impugned order.

22. On the contrary, if the prayer of the petitioner is accepted and the order of recall is set aside, the Court will be constrained to decide a serious double-murder case without the benefit of complete evidence regarding the weapons and material objects which are central to the prosecution version. Such a course, in the considered opinion of this Court, would not advance the cause of justice.

23. The power under Section 528 BNSS / Section 482 Cr.P.C., 1973, is not an appellate power. This Court does not sit in appeal over every discretionary order of the learned Trial Court. Unless the



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discretion vested in the learned Trial Court under Section 311 Cr.P.C., 1973, is shown to have been exercised arbitrarily, capriciously or in total disregard of legal principles, interference would not be warranted.

24. In the present case, the learned Additional District and Sessions Judge has taken note of the long pendency of the case, the nature of the offences, the fact that P.W.1 and P.W.2 are eye-witnesses, the fact that the material objects are already part of the record and in Court custody the necessity of considering all relevant evidence for a just decision, and, on that basis, has allowed the petition with a strict condition limiting the recall to a particular date.

25. This Court does not find any perversity, patent illegality or abuse of process in the said reasoning. On the other hand, the order reflects a proper exercise of jurisdiction to ensure that the trial is decided on the basis of full and complete evidence. At the same time, this Court is conscious of the grievance of the petitioner regarding the long pendency of the case and the necessity to avoid further delays. Therefore, while declining to interfere with the impugned



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order, appropriate directions can be issued to ensure expeditious completion of the trial.

26. In view of the foregoing discussion, this Court holds that the order dated 01.11.2025 passed by the learned Additional District and Sessions Judge, Sivagangai, in Crl.M.P.No.7 of 2024 in S.C.No. 47 of 2016, recalling P.W.1 and P.W.2 under Section 311 Cr.P.C., 1973, does not suffer from any illegality or perversity warranting interference under Section 528 BNSS / Section 482 Cr.P.C., 1973, the recall of P.W.1 and P.W.2, in the facts of this case, is to bring on record evidence relating to material objects already seized and produced before the Court and is essential for a just decision of the case; and no prejudice is caused to the accused, since they retain the right of cross-examination, and the learned Trial Court has imposed appropriate safeguards.

27. Accordingly, the Criminal Original Petition stands dismissed. The impugned order dated 01.11.2025 in Crl.M.P.No.7 of 2024 in S.C.No.47 of 2016 is affirmed.



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28. However, having regard to the fact that the case pertains to an occurrence of the year 2014 and that the Sessions Case has been pending since 2016, the learned Trial Court is directed to secure the presence of P.W.1 and P.W.2 on the date fixed, or on such nearest available date, and complete their further examination as expeditiously as possible, strictly confining the recall to the aspects indicated in the petition under Section 311 Cr.P.C., 1973; to afford due opportunity of cross-examination to all the accused; and thereafter, to proceed with the trial and dispose of S.C.No.47 of 2016, in accordance with law, preferably within a period of three months from the date of receipt of a copy of this order, without granting unnecessary adjournments to either side. The connected miscellaneous petition is closed.

10.12.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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- 1.The Additional District &
Sessions Court,
Sivagangai District.
- 2.The Inspector of Police,
Central Crime Branch,
Sivagangai 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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