



Crl.OP.No.268 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2026

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.OP.No.268 of 2026

and

Crl.MP.No.198 of 2026

J.Senthil Prakash

...Petitioner

Vs.

J.Nagarajan

...Respondent

Criminal Original Petition filed under Section 528 of BNSS, 2023 to set aside the said order dated 29.04.2025 in Crl.MP.No.837 of 2025 in CC.No.24 of 2021 on the file of the learned District Munsif-cum-Judicial Magistrate, Vikravandi and consequently allow Crl.MP.No.837 of 2025 in CC.No.24 of 2021 in accordance with law.

For Petitioner : Mr.M.Velan

ORDER

This criminal original petition has been filed seeking quashment of the order dated 29.04.2025 passed in Crl.MP.No.837 of 2025 in CC.No.24 of 2021 on the file of the learned District Munsif-cum-Judicial Magistrate, Vikravandi and to consequently, allow the petition filed by the petitioner



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under section 311 of Cr.P.C., in Crl.MP.No.837 of 2025 seeking to recall P.W.1 for cross examination.

2. The brief facts are as follows:

The petitioner is an accused facing trial in CC.No.24 of 2021 for the offences under Sections 138 & 142 of the Negotiable Instruments Act, 1881 and Section 357 of Cr.P.C. before the learned District Munsif-cum-Judicial Magistrate, Vikravandi, pursuant to the complaint lodged by the respondent/complainant. The petitioner filed a petition under Section 311 of Cr.P.C. in Crl.MP.No.837 of 2025, seeking to recall P.W.1 for cross-examination. However, the trial court, vide impugned order dated 29.04.2025, dismissed the said petition on the ground that the same has been filed only to drag on the proceedings. Challenging the same, the present petition has been filed.

3. Learned counsel for the petitioner submitted that due to some personal inconvenience, the petitioner was unable to cross-examine the respondent/complainant on the day when he was examined in chief and that the petitioner has certain valid questions to put to the respondent/complainant and therefore, the petitioner has earlier filed a petition under



Section 311 of Cr.P.C. and the same was allowed with costs of Rs.500/-.

However, it is the respondent/complainant who did not co-operate for cross-examination and he never got into the witness box. Thereafter, the matter was referred to Lok Adalat on the request made by the learned counsel who appeared on behalf of the respondent/complainant before the trial court. However, the same ended in vain. Therefore, the petitioner filed the present petition under Section 311 of Cr.P.C., seeking to recall P.W.1 for cross-examination, as the same is absolutely necessary, in order to enable the trial court to arrive at a just and reasonable decision and the delay caused in filing the present recall petition is neither wilful nor wanton. However, the trial Court, without considering any of the above said facts, had dismissed the petition under Section 311 Cr.P.C. which is not sustainable. He further submitted that if the petitioner is not permitted to recall P.W.1 for further cross-examination, he would be put to grave hardship. Hence, he prayed to set aside the impugned order dated 29.04.2025.

4. This Court gave its careful consideration to the arguments advanced by the learned counsel for the petitioner and perused the materials available on record.



5. The facts are not in dispute. For better appreciation, the relevant portion of the impugned order is extracted hereunder:

*“5. The Judgment of Hon'ble Supreme Court of India in **Vined Kumar sharma Vs state of Punjab 2015 3 SCC 220**, the Hon'ble Apex Court categorically held in Para 59.4 :*

"In fact, it is not at 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".

6. From the above judgment, it is clear that cross examination should not be deferred for a long time. Records perused. This case was originally filed before JM II Villupuram in CC.No.132/2018 subsequently transferred to this court and this case spending for more than seven years and the reason stated by the petitioner is not satisfactory further the case is pending due to the absence of accused. It shows that the petitioner wilfully delaying the proceedings of this case. This court is not inclined to allow this petition.

In the result this petition is dismissed.

(Emphasis supplied by this Court)



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6. On a perusal of the order impugned, it is seen that the complaint was originally made in the year 2018 before the learned Judicial Magistrate No.II, Villupuram in CC.No.132 of 2018 and the same was subsequently transferred to the file of the learned District Munsif-cum-Judicial Magistrate, Vikravandi and re-numbered as CC.No.24 of 2021 and the same is pending for the past seven years only due to the absence of the petitioner/accused. Further, it is seen that the impugned order dismissing the petition under Section 311 of Cr.P.C. came to be passed as early as on 29.04.2025. However, the petitioner has put the same to challenge before this Court after a lapse of about eight months, that too, when the case is posted for judgment on 12.01.2025, which clearly shows the tactic adopted by the petitioner to protract the proceedings, which cannot be countenanced.

7. In view of the above, this Court is of the view that the trial court had rightly dismissed the recall petition filed by the petitioner and hence, no interference is warranted in the impugned dismissal order.



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8. For the reasons aforesaid, this criminal original petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

09.01.2026

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To:

The District Munsif-cum-Judicial Magistrate,
Vikravandi.



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