



WEB COPY

CRL OP No. 3136 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-02-2026

CORAM

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

**CRL OP No. 3136 of 2026
and Crl.M.P.No.2175 of 2026**

A.Manickam

..Petitioner

Vs

P.Balasubramaniam

..Respondent

Prayer: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to set-aside the order passed by the Judicial Magistrate Court-I, Pollachi, in Crl.M.P.No.1 of 2025 in S.T.C.No.946 of 2016, dated 19.01.2026.

For Petitioner(s):

Mr.M.N.Balakrishnan

ORDER

This Criminal Original Petition has been filed to set aside the order, dated 19.01.2026 passed in Crl.M.P.No.1 of 2025 in S.T.C.No.946 of 2016 by the learned Judicial Magistrate-I, Pollachi, dismissing the petition filed under Section 311 of Cr.P.C. to recall P.W-1 for the purpose of cross-examination.



2. The learned counsel appearing for the petitioner submitted that the petitioner is an accused facing trial for the offence under Section 138 of the Negotiable Instruments Act. The petitioner has not cross-examined P.W-1 and hence, he filed the petition to recall P.W-1 for the purpose of cross-examination. However, the trial Judge, without giving an opportunity to the petitioner, had dismissed the application. Therefore, the present petition has been filed.

3. Heard the learned counsel appearing for the petitioner and perused the order of the trial Judge.

4. The discussion of the learned trial Judge, while arriving at the decision, reads as under:

"8. It is seen that both the petitions have been preferred to reopen and recall the complainant side evidence to cross-examine PW-1. On the contrary, the respondent/complainant has filed a counter vehemently objecting to the petitions.

9. A perusal of the note papers would reflect that the complaint was filed by the complainant against the accused alleging dishonour of cheque for a sum of Rs.7,50,000/-. Cognizance was taken by this Court on 20.04.2016. The trial commenced on 12.08.2016. The complainant examined himself as P.W-1 on 16.12.2016.

10. Thereafter, from 2016 till 04.03.2021, the case was posted on several hearing to provide opportunity to the accused, who is the petitioner herein, to cross-examine P.W-1. However, due to non-cross-examination, the chance of cross-examining P.W-1 came to be closed on 04.03.2021.

11. The case was thereafter posted on 12.03.2021, and the accused was examined under Section 313(1)(b) of the Code of Criminal



Procedure. Immediately thereafter, on the next hearing date, namely 25.03.2021, the petitioner preferred a petition to recall the complainant, that is P.W-1, to complete his cross-examination. However, the said petition came to be dismissed on 07.09.2022 for the reason that no reopening petition was filed along with it. The Court, while dismissing the petition, clearly observed that it was dismissed only due to procedural lapse.

12. Despite the dismissal, the petitioner did not take any steps to reopen and recall the complainant's side evidence by curing the defect. Instead, the petitioner preferred petitions only to reopen and recall the defence side evidence, which had already been closed earlier.

13. It is also pertinent to point out that, even after reopening the defence side evidence, till date no defence evidence has been adduced on the side of the accused. only on 28.08.2025, the present petitions came to be filed by the petitioner praying for the above-mentioned relief.

14. A reading of the note papers would clearly establish the intention and mala fide conduct on the part of the petitioner/accused to only drag on the proceedings. It would defeat the object of the Act and is against the interest course of justice. Despite a similar petition having been dismissed earlier in the year 2022, and despite the observation of the Court regarding the procedural defeat, the accused failed to take steps to file a proper petition after curing the defect.

15. The conduct of the accused in filing the present petitions at this belated stage clearly establishes that the same have been filed only to drag the proceedings further for years together. Having arrived at the opinion that the present petitions are filed only to delay the proceedings, and also considering that permitting such petitions would amount to abuse of process of law and defeat the interest of justice, the present petitions are hereby dismissed."

5. On perusal of the above order passed by the trial Judge, it is found that the trial Judge, rightly finding that despite several opportunities having been granted to the petitioner, he has not cross-examined the witness and that the petition has been filed only to protract the proceedings which has been pending for several years, has dismissed the petition. This Court does not find



any infirmity or illegality in the order dated 19.01.2026 passed in Crl.M.P.No.1
of 2025 in S.T.C.No.946 of 2016 by the learned Judicial Magistrate-I, Pollachi.

Hence, this Criminal Original Petition stands dismissed.

10-02-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

SRM

To

The Judicial Magistrate Court-I,
Pollachi.



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A.D.JAGADISH CHANDIRA, J.

SRM

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