



WEB COPY



Crl OP No.5889 of 2026
and Crl MP Nos.4353 & 4354 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl OP No.5889 of 2026
and Crl MP Nos.4353 & 4354 of 2026

S.Arunkumar

... Petitioner

VS

1. The State Rep by
The Inspector of Police,
R-4, Soundarapandiyanar Angadi Police Station,
Pondy Bazaar, T.Nagar,
Chennai – 600 017.

2.Viswanath

.... Respondents

Prayer : Criminal Original Petition filed under Section 528 of BNSS, 2023,
to call for the records in CC No.1052 of 2020 pending on the file of the
XVII Metropolitan Magistrate, Saidapet, Chennai, and quash the same
insofar as the petitioner is concerned.

For Petitioner : Mr.S.Veeraraghavan
for Ms.G.Uma Maheswari

For R1 : Mr.Leonard Arul Joseph Selvam
Additional Public Prosecutor



WEB COPY



CrI OP No.5889 of 2026
and CrI MP Nos.4353 & 4354 of 2026

ORDER

This criminal original petition is filed to call for the records in CC No.1052 of 2020 pending on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai, and quash the same.

2.The petitioner, who is A2 in C.C.No.1052 of 2020, facing trial for an offence under Sections 34 and 394 IPC, has filed this quash application. The case of the prosecution is that on 04.08.2017, the defacto complainant, Manager of Poorvika Mobiles, T.Nagar, produced a person Gopiraj and two mobile phones and a knife and lodged a complaint stating that when he was in the showroom at about 10.45 AM, the said Gopiraj had come and enquired to purchase a iphone 7+ model, he was explained the offers, at that time, Rajasekar, a Samsung phone promoter, shown iphone7+ and Samsung S8 phones and explained to him the features and advantages between both phones. The person who had come there had took both phones and ran away and escaped. When the defacto complainant and Rajasekar chased to catch him, he shown the knife and inflicted injuries. When Gopiraj further ran he



CrI OP No.5889 of 2026
and CrI MP Nos.4353 & 4354 of 2026

fell down on the road and sustained injuries and he was taken to police station and the case registered. As regard this petitioner/A2, he is arrayed as accused based on the confession of A1, admittedly the petitioner/A2 was not with A1, when he entered the shop and when he attempted to flee, no where seen near the scene of occurrence.

3.The contention of the learned counsel for the petitioner is that there is no evidence to show petitioner had any know of Gopiraj/A1, act. Even in the said confession there is a bald statement that the said Gopiraj was previously employed by the petitioner as a driver and thereafter Gopiraj left employment and worked in various other places in a juice shop at Saligramam, in Copper Kitchen at Porur and other places. The averment is that once Gopiraj enquired petitioner how to lead a luxurious life and petitioner is said to have stated by committing theft and robbery one can become rich. Further in this case, after the death of co-accused. Section 30 of the Indian Evidence Act cannot be used against the petitioner. In this case, admittedly A1 is no more. Hence co-accused confession cannot be used against the petitioner. The learned counsel for the petitioner submitted death of A1 reported and recorded by the Trial Court. Admittedly, the petitioner

Page 3 of 9



CrI OP No.5889 of 2026
and CrI MP Nos.4353 & 4354 of 2026

not present in the scene of occurrence. Only on the confession of A1,
petitioner arrayed as accused in this case.

4.The learned Additional Public Prosecutor submitted that one Viswanath, Accountant in Poorvika Mobiles, T.Nagar on 04.08.2017 along with a Sales Promoter Rajasekar brought a person named Gopiraj along with one iphone and Samsung phone complaining that on the guise of purchasing a phone, he collected the phone and shown a knife threatening the inmates, fled from the scene when chased, fell down on the road and he was produced along with the knife. Thereafter, case in Crime No.1328 of 2017 for the offence under Section 394 IPC registered. During interrogation, the said Gopiraj gave a confession that the petitioner abetted the offence and hence, the petitioner was also arrayed as accused. On conclusion of investigation, charge sheet filed before the Trial Court on 07.03.2019 listing nine witnesses and producing documents and material objects. He fairly submitted that the petitioner was not present anywhere near the scene of occurrence and it is Gopiraj who entered the showroom, threatened the inmates and taken away the mobile phones. The petitioner arrayed as accused based on the confession of the said Gopiraj/A1. He further submitted that now

Page 4 of 9



CrI OP No.5889 of 2026
and CrI MP Nos.4353 & 4354 of 2026

Gopiraj/A1 is no more and his death was reported to the Trial Court and the case is now pending trial against the petitioner alone.

5.Considering the submissions made and on perusal of the materials, it is seen that in the listed witnesses, LW1 is the defacto complainant and LW2 is the Manager of the Showroom, these two witnesses is for occurrence proper and they have not stated anything about the petitioner. LW3 and LW4, are the witnesses for arrest and confession, confirm Gopiraj/A1 disclosing about the petitioner as his previous employer. LW5 and LW6 are the witnesses for observation mahazar. LW7 is the Doctor who treated the injured, LW8 is the Inspector of Police who registered FIR and LW9 is the Investigating Officer who completed the investigation and filed charge sheet. From the uncontroverted statement of these witnesses, except for the reference about the petitioner in the confession of A1 there is no other material against the petitioner and no seizure made from the petitioner. Further, as per Section 30 of the Indian Evidence Act, it is clear that confession made by one of the person/accused who are tried jointly for the same offence, the said confession can be taken into consideration against the co-accused. In this case, admittedly Gopiraj/A1 is no more and hence, the

Page 5 of 9



Crl OP No.5889 of 2026
and Crl MP Nos.4353 & 4354 of 2026

confession of A1 cannot be considered to be a material against the petitioner.

The Apex Court in the case of ***P.Krishna Mohan Reddy vs. The State of Andhra Pradesh*** reported in ***2025 SCC Online SC 1157***, considering various judgments right from Privy Council and previous judgments of the Hon'ble Supreme Court had given guidelines as to under what circumstances, confession of co-accused can be acted upon against the maker and the co-accused. It would be apposite to extract the exposition which is relevant to the above case:

(v) A confessional statement of one accused implicating another co-accused may be taken into consideration by the court against such co-accused in terms of Section 30 of the Evidence Act, only at the stage of trial, where (1) the confession itself was relevant and admissible in terms of the Evidence Act; (2) was duly proved against the maker; (3) such confessional statement incriminates the maker along with the co-accused and; (4) both the accused persons in question are in a joint trial for the same offence.

(vi) Furthermore, because such confessional statements are not “evidence” in terms of Section 3 of the Evidence Act as held in ***Bhuboni Sahu*** (supra), such a confession as held in ***Kashmira Singh*** (supra) can only be pressed into consideration by the court as a rule of



CrI OP No.5889 of 2026
and CrI MP Nos.4353 & 4354 of 2026

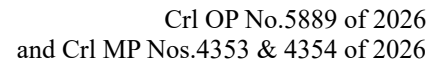
prudence, to lend assurance to the other evidence against such co-accused, provided that aforesaid ingredients or conditions of Section 30 read with Section(s) 24 to 29 of the Evidence Act, are fulfilled.

6.Thus, looking the case from any angle there is no material against the petitioner. In view of the same, this Court finds that continuation of the proceedings will serve no purpose and it is only an abuse of process of law.

7.Accordingly, this Criminal Original Petition stands allowed and as a sequel, the case in C.C.No.1052 of 2022 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai is hereby quashed. Consequently, connected miscellaneous petitions are closed.

09.03.2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
mtl/cse



1.The Inspector of Police,
R-4, Soundarapandiyanar Angadi Police Station,
Pondy Bazaar, T.Nagar,
Chennai – 600 017.

3.The Public Prosecutor High Court, Madras.



WEB COPY



CrI OP No.5889 of 2026
and CrI MP Nos.4353 & 4354 of 2026

M.NIRMAL KUMAR, J.

mtl/cse

CrI OP No.5889 of 2026
and CrI MP Nos.4353 & 4354 of 2026

09.03.2026