



WEB COPY

CRL OP No. 6791 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-03-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL OP No. 6791 of 2026

Godwin King

..Petitioner(s)

Vs

The State rep.by, The Inspector of Police,
Singanallur Police Station,
Coimbatore District.
(Cr.No.700/2022)

..Respondent(s)

Criminal Original Petition is filed under Section 528 of B.N.S.S., to call for the records relating to the impugned order dated 24.02.2026 passed in CrI.MP.No.1787 of 2026 in C.C.No.717 of 2024 on the file of the learned Judicial Magistrate No.III, Coimbatore District and to set aside the same.

For Petitioner(s): Mr.G.Paramasivam

For Respondent(s): Mr.Leonard Arul Joseph Selvam,
Additional Public Prosecutor

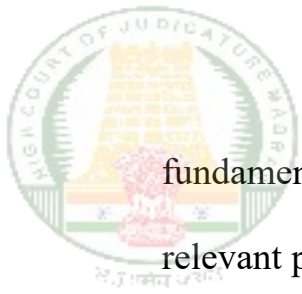
ORDER

This Criminal Original Petition has been filed seeking to set aside the impugned order dated 24.02.2026 in CrI.M.P.No.1787 of 2026 in C.C.No.717 of 2024 passed by the Judicial Magistrate Court No.III, Coimbatore District.

2. The petitioner/A1 is facing trial with another accused in C.C.No.717 of 2024 for the offences punishable under Sections 392 and 34 of



the Indian Penal Code. The contention of the petitioner is that he has been falsely implicated in the present case. It is further submitted that the de facto complainant(P.W.1) was examined on 11.02.2026 and P.W.2 was examined on 19.02.2026. On the said date, the learned counsel for the petitioner was unable to be present before the trial Court as he had to attend a family bereavement and therefore sought deferment of cross-examination. However, the learned trial Judge, without advertng to the said request and noting that A2 was in judicial custody, proceeded with the matter by appointing an *amicus curiae* and permitted cross-examination of the witnesses. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in *Pateeswaran Vs. the State of Tamilnadu* in SLP(Crl) No.15424 of 2024 dated 08.11.2024, wherein, it has been held that even in circumstances where the accused is in custody, the appointment of an *amicus curiae* and conducting cross -examination in the absence of the engaged counsel, without affording reasonable opportunity, is not proper and would prejudice the accused. Thereafter, the petitioner filed a petition under Section 311 Cr.P.C., in C.M.P.No.1787 of 2026 seeking recall of P.W.1 and P.W.2 for the purpose of re-cross-examination. The said petition was dismissed by order dated 24.02.2026. Aggrieved by the same, the present petition has been filed. In support of his contention, the learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in *Varsha Garg Vs. The State of Madhya Pradesh and Others*, reported in (2023) 19 SCC 646, wherein it has been held that the right to a fair trial is a



fundamental right guaranteed under Article 21 of the Constitution of India. The relevant portion of the order is extracted hereunder:

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42. Having dealt with the satisfaction of the requirements of Section 311, we deal with the objection of the respondents that the application should not be allowed as it will lead to filing in the lacunae of the prosecution's case. However, even the said reason cannot be an absolute bar to allowing an application under Section 311.

43. In the decision in Zahira Habibullah Sheikh (5) Vs. State of Gujarat, which was more recently reiterated in Godrej Pacific Tech. Ltd., Vs. Computer Joint India Ltd., the Court specifically dealt with this objection and observed that the resultant filling of loopholes on account of allowing an application under Section 311 is merely a subsidiary factor and the court's determination of the application should only be based on the test of the essentiality of the evidence. It noted that: [Zahira Habibullah Sheikh (5) case, SCC p.393, para 28]

"28... The Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the Court can take note of the fact that the best available evidence has not been given and can draw an adverse inference. The court will often have to depend on intercepted allegations made by the parties or on inconclusive inference from facts elicited in the evidence. In such cases, the Court has



to act under the second part of the section. Sometimes the examination of witnesses as directed by the Court may result in what is thought to be “filling of loopholes”. That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case and has to be determined by the Presiding Judge.”

3. The learned Additional Public Prosecutor appearing for the respondent submitted that in this case, the de facto complainant has been examined as P.W.1 on 11.02.2026 and P.W.2, an eye-witness to the occurrence, was examined on 19.02.2026 and the relevant documents were duly marked. It is further submitted that since the counsel for the petitioner was absent and A2 was in custody, the trial Court, in order to safeguard the interest of the accused, appointed an *amicus curiae* and proceeded with the cross-examination.

4. It is seen from the records that P.W1 and P.W.2 were examined in chief and cross-examined on the same day. The specific case of the petitioner is that his counsel could not be present due to unavoidable circumstances, namely attending a family condolence, and therefore could not effectively cross-examine the witnesses.



5. In such circumstances, conducting cross-examination through an *amicus curiae* on the very same day, without affording sufficient opportunity to the counsel for the petitioner, cannot be said to be proper and is likely to cause serious prejudice to the defence. If at all there was any delay on the part of the defence, the trial Court ought to have granted reasonable opportunity instead of proceeding in haste. Without providing adequate opportunity to the petitioner's counsel, recording of cross-examination amounts to denial of fair trial and infringes the fundamental rights of the petitioner under Article 21 of the Constitution of India.

6. In view of the above, the impugned order dated 24.02.2026 in C.M.P.No.1787 of 2026 is hereby set aside and the trial Court is directed to recall P.W.1 and P.W.2 to afford an opportunity to the petitioner's counsel to cross-examine the said witnesses.

7. In the result, this Criminal Original Petition is allowed.

17-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

VKR



M.NIRMAL KUMAR, J.

VKR

To

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- 1.The Judicial Magistrate No.III, Coimbatore District.
- 2.The Inspector of Police,
Singanallur Police Station,
Coimbatore District.
- 3.The Public Prosecutor,
High Court of Madras.

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