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CRL OP No. 7362 of 2026



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-03-2026

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL OP No. 7362 of 2026

and

CRL MP No.5328 of 2026

Azhar @ Imamoli

Petitioner(s)

Vs

The Inspector of Police,
Villupuram Taluk Police Station,
S.C.No.88 of 2023 in FIR.No.94/2020.

Respondent(s)

PRAYER: Criminal Original Petition filed under Section 528 of BNSS, to set aside the order dated 03.02.2026 passed in Cr.M.P.No.5076/2025 in S.C.No.88/2023 by the learned Principal Sessions Judge, Villupuram, allowing the petition under Section 311 Cr.P.C., as being legally unsustainable and prejudicial to the petitioner.

For Petitioner(s): Mr.Mugendran
for Mr.B.William

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



ORDER

The petitioner, who is the accused in S.C.No.88 of 2023, has challenged the order passed by the trial Court in CrI.M.P.No.5076 of 2025, whereby, the petition filed by the respondent/prosecution under Section 311 Cr.P.C, seeking permission to receive a C.D. and the certificate under Section 65-B of the Indian Evidence Act, was allowed.

2. The learned counsel for the petitioner submitted that, filing of a petition under Section 311 Cr.P.C, is to introduce newly produced CD as M.O.No.13 along with a belated certificate under Section 65-B of the Indian Evidence Act, as P.Ex.29 at the final stage of the trial, which is contrary to the settled principles governing the exercise of power under Section 311 Cr.P.C.

2.1. He further submitted that the learned Sessions Judge failed to consider that the earlier electronic record filed was empty and that there was an unexplained delay in producing the alleged fresh material. It was also contended that there was no footage in the original hard disk or in the CD produced along with the charge sheet, and therefore, no primary or secondary electronic evidence is collected.

2.2. It is further submitted that P.W.16, the Sub Inspector of Police who



took part in the Investigation, claims that he had played the recordings on a computer, copied them into his mobile phone, and after five years, again copied the same from the mobile phone into a CD and attempted to mark it as material object. He submitted that the petitioner is facing trial for offences under Sections 148, 449, 506(ii), 302, 120-B and 436 IPC, Section 4 of the Explosive Substances Act and Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act and the charges are serious in nature. In such circumstances, the respondent/Police cannot be permitted to act lethargically and introduce new materials at its convenience to secure a conviction. He also pointed out that P.W.3, P.W.4, P.W.5, P.W.7 and P.W.8 are the witnesses who have not supported the case of the prosecution. Thus, the root of the prosecution case has been cut, and thereafter, now at the belated stage, permitted the introduction of new material, which would amount to filling up the lacunae, which is impermissible.

3. In support of his contentions, the learned counsel for the petitioner relied upon the judgement in the case of ***Prabir Kumar Roy Vs. State of Jharkhand, reported in (2009) SCC Online Jhar 1202***, wherein it was held that Section 311 Cr.P.C does not connote or denote production and examination of any documents and it only can be used to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or



recall and re-examine any person already examined, but new document cannot be introduced. He also relied upon the judgment of the Apex Court in the case of ***Mayankkumar Natwarlal Kankana Patel and another Vs. State of Gujarat and another*** in SLP (Crl.A).Nos.1167-1168 of 2025 ***reported in (2025) INSC 1475*** and submitted that the trial Court, allowing the impugned order and recording that the trial Court shall ensure adequate opportunity of cross examination to the defence and the defence could not be sufficient in allowing the petition belatedly much after after several years. Further, it had also recorded that there is no material or record to substantiate the claim now made and has been already recorded in FIR and the statement of witnesses and the testimony of the complainant. It also observed that Section 311 Cr.P.C was filed after examination of 21 prosecution witnesses at an advanced stage of the trial and it was found that the order of the High Court in allowing the petition is not proper and set aside the order.

4. In the present case also, the case is at the advanced stage, and the case is posted on 25.03.2026 for examination of the last Investigating Officer in this case as PW19. At this stage, the impugned order passed, is not proper and hence, it is liable to be set aside.

5. The learned Additional Public Prosecutor appearing for the



respondent/Police, on the other hand, submitted that the accused is charged with committing murder under Section 302 IPC by hurling a petrol bomb at the petrol bunk. The entire occurrence has been recorded by the CCTV cameras installed at the petrol bunk. He further submitted that the Investigating Officer has viewed the CCTV footage at the petrol bunk and that the Sub Inspector of Police, namely, Tr.Prakash (P.W.16), who registered the FIR, recorded the footage in his mobile phone. The certificate under Section 65-B of Indian Evidence Act, and CD was submitted into the Court along with the statement of Bharathiraja recorded under Section 161 Cr.P.C., who was examined as PW7, which had not supported the case of the prosecution. Further, he submitted that recording of the entire event had been placed by the Sub Inspector of Police and the same had been produced in the Court as CD, which later on playing, found that the pictures were not recorded. Therefore, he submitted that it had become necessary to produce the primary evidence, namely the mobile phone of PW16, along with a certificate under Section 65-B of the Indian Evidence Act.

6. In this case, it is a gruesome murder, which took place in public view at the office of the petrol bunk. The accused herein is alleged to have hurled a petrol bomb at the victim and committed the murder. The petrol bunk was equipped with 8 CCTV cameras, all of which were in working conditions and had recorded the events. The hard disk containing the recordings, was collected

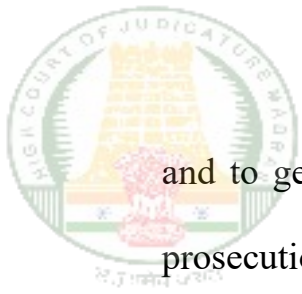


by the respondent/Police during the course of investigation.

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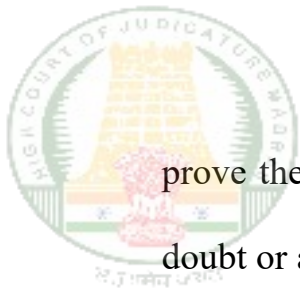
7. He further submitted that the hard disk contains footage of the incident, including the act of hurling the petrol bomb and the subsequent attack on the victim. He further submitted that the petitioner had also raised detailed and strong objections before the trial Court, however, the trial Court, after considering all the aspects, including the fact that several occurrence witnesses had not supported the prosecution case, and took note of the recordings available in the hard disk, which were also recorded by P.W.16.

8. The objections raised by the petitioner were duly considered by the trial Court and also following the judgement of the Apex Court in the case of *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal*, decided on **14.07.2020** reported in **2020 (3) SCC (Cri) 1**, with regard to the certificate required under Section 65-B of the Indian Evidence Act and also referring to the judgment in the case of *State of Karnataka Vs. T.Naseer*, decided on **06.11.2023** reported in **2023 (6) CTC 330**, dealing with the scope of Sections 91 or 311 Cr.P.C or Section 165 of the Indian Evidence Act as well as the other relevant judgments of this Court, extracted the same in the impugned order. Thereafter, upon considering the contentions of the prosecution and the objections of the petitioner herein, and bearing in mind the interest of the justice



and to get the best evidence available, which would be beneficial to both the prosecution and the accused, the trial Court has rightly allowed the petition, and the same deserves to be confirmed.

9. Considering the submissions made by the learned counsel on either side and upon perusal of the materials available on record, it is seen that the prosecution had filed a petition under Section 311 Cr.P.C to produce the mobile phone of the Sub Inspector of Police, viz., Tr.Prakash P.W.16, along with a certificate under Section 65-B of the Indian Evidence Act. The reason for seeking production of the mobile phone is to view the CCTV recordings, which were earlier recorded in the said mobile phone. Though the CCTV recordings were initially transferred to a CD and produced before the trial Court, it was later found, upon playing the CD, that the relevant recordings had not been properly captured. Hence, it has become imperative and necessary to produce and mark the mobile phone of P.W.16, wherein the recordings are available along with the date and time details. The prosecution has also expressed its readiness to submit the mobile phone for forensic examination in order to ascertain the authenticity, date and time of the recordings. When once the electronic evidence is admitted, the same can be covered under a certificate as required under Section 65-B of the Indian Evidence Act, which can be obtained from the user of the mobile phone. Further, such forensic examination would



prove the genuineness of the recordings in the mobile phone and rule out any doubt or apprehension raised by the petitioner.

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10. In view of the above discussion, this Court does not find any reason to interfere with the well reasoned impugned order passed by the trial Court.

11. In the result, this Criminal Original Petition is dismissed.

24-03-2026

Jd

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

To

1.

The Inspector of Police,
Villupuram Taluk Police Station,
S.C.No.88 of 2023 in FIR.No.94/2020.

2. The Public Prosecutor, Madras High Court, Chennai.



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