



Crl.OP(MD)No.2085 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.02.2026

PRONOUNCED ON : 21.04.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.2085 of 2026

and

Crl.M.P.(MD)No.2354 of 2026

Selvi @ Saroja

... Petitioner/Accused No.1

Vs.

The State of Tamilnadu,
Rep by the Inspector of Police,
Kovilpatti East Police Station,
Thoothukudi District.
Crime No.670/2009

.... Respondent / Complainant

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records relating to the impugned order passed in Crl.MP.No.1603 of 2025 in C.C.No.111 of 2013 dated 15.12.2025 and to set aside the same as illegal.

For Petitioners : Mr.Karuppasamy Pandian,

For Mr.D.Rajaboopathy

For Respondent : Mr.S.Ravi,

Additional Public Prosecutor



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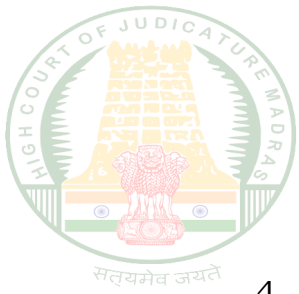
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ORDER

This Criminal Original Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking to set aside the order passed by the learned Judicial Magistrate No.I, Kovilpatti, in Crl.M.P.No.1603 of 2025 in C.C.No.111 of 2013, dated 15.12.2025.

2. By the impugned order, the learned Magistrate allowed the petition filed by the prosecution under Section 311 Cr.P.C., 1973, seeking to recall and re-examination of P.W.10, the Investigating Officer, for the limited purpose of marking a particular portion of the alleged confession statement said to have been omitted earlier during his examination.

3. The petitioner, who figures as Accused No.1 in the calendar case, challenges the legality of the said order on the ground that the proposed re-examination is belated, unnecessary, and intended only to mark an inadmissible inculpatory portion of the confession.



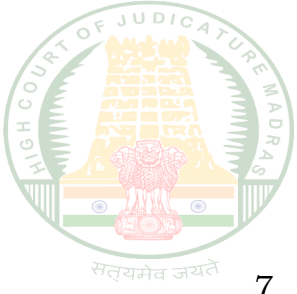
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4. The respondent-State, on the other hand, would contend that the portion sought to be marked is one which led to discovery of a relevant fact and that the power under Section 311 Cr.P.C., 1973, can be exercised at any stage of the proceedings in the interest of a just decision.

Case of the prosecution:

5. The case relates to an occurrence of theft, in respect of which the First Information Report came to be registered on 25.05.2009. Upon completion of investigation, the respondent police laid the final report in the year 2012.

6. The learned trial Magistrate took cognizance of the offences and the case was taken on file as C.C.No.111 of 2013. During the course of trial, the prosecution examined ten witnesses as P.W.1 to P.W.10. P.W.10 is the Investigating Officer. The examination of P.W. 10 was completed on 22.04.2021. Thereafter, the matter progressed further and was ultimately posted for arguments.



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7. At that stage, the prosecution filed Crl.M.P.No.1603 of 2025 under Section 311 Cr.P.C., 1973, seeking recall and re-examination of P.W.10 for the purpose of marking a specific portion of the confession statement allegedly made by the accused. According to the prosecution, though the said portion had relevance to the case and had allegedly led to a material recovery, the same was omitted to be marked earlier due to inadvertence.

8. The said portion of the confession, which the prosecution seeks to mark through P.W.10, is extracted below:

“மேலும் என்னை அழைத்து சென்றால் என்னுடன்
திருட வந்த தங்கராஜ், செல்வராஜ் ஆகியோரையும், என்னிடம்
நான் திருடிய பொருளை வாங்கிய நபர்களையும் அடையாளம்
காட்டுகிறேன்.”

9. The learned Magistrate, upon considering the rival submissions, allowed the said petition by order dated 15.12.2025, holding that the portion sought to be marked is relevant for the just adjudication of the case and that no prejudice would be caused to



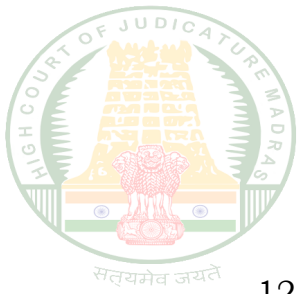
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the accused, since the accused would have opportunity to cross-examine the witness on recall. Aggrieved by the said order, the petitioner has approached this Court.

Grounds for quash:

10. The principal grounds raised by the petitioner are two-fold. Firstly, it is contended that the prosecution has approached the trial Court at a highly belated stage after closure of evidence and when the matter was posted for arguments, thereby adopting an impermissible eleventh-hour strategy to fill up lacunae in the prosecution case.

11. Secondly, it is argued that the portion of the confession sought to be marked is wholly inculpatory in nature and therefore inadmissible in evidence. According to the petitioner, the statement does not contain any legally admissible information leading to discovery of a fact within the meaning of Section 27 of the Evidence Act, but only amounts to an inculpatory statement implicating the accused.



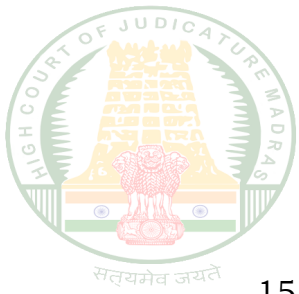
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12. It is further urged that the impugned order is bereft of proper reasoning and does not disclose why the proposed evidence is essential for arriving at a just decision of the case. On the above premises, the petitioner seeks interference by this Court.

Arguments on the side of the petitioner:

13. The learned counsel appearing for the petitioner submitted that the impugned order has arisen out of the order passed by the learned Judicial Magistrate No.I, Kovilpatti, in Crl.M.P.No.1603 of 2025 in C.C.No.111 of 2013, dated 15.12.2025, permitting the prosecution to recall and re-examine P.W.10, who is the Investigating Officer.

14. The learned counsel would submit that the FIR itself was registered as early as on 25.05.2009, the charge sheet was filed in the year 2012, and the case was taken on file in C.C.No.111 of 2013. He would point out that P.W.10, the last witness for the prosecution, had already been examined on 22.04.2021 and that nearly four and a half years thereafter, the prosecution has filed the recall petition.



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15. According to the learned counsel, the application under Section 311 Cr.P.C., 1973, was filed not for the purpose of clarifying any ambiguity or bringing on record any essential evidence, but only to improve the prosecution case after realising the legal deficiencies in the evidence already adduced.

16. The learned counsel drew the attention of this Court to the specific portion of the confession sought to be marked and submitted that the same is clearly inculpatory and not exculpatory. He placed reliance upon the judgment of the Hon'ble Division Bench of this Court in ***Murugan and Others vs. State represented by the Inspector of Police, Tenkasi Police Station, Tirunelveli District***¹, and more particularly paragraphs 27 to 30 thereof.

17. By relying upon the said judgment, the learned counsel would contend that only such portion of the statement which distinctly relates to the discovery of a fact can be admitted and marked, and not a general inculpatory narrative. He would further contend that in the present case, the statement does not disclose the place where the stolen articles were kept nor the identity of the

¹ 2019 (2) LW (Crl.) 877



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person with whom the stolen articles were entrusted in a manner that would satisfy the legal test of admissibility.

18. The learned counsel also submitted that the seizure mahazar would show that the alleged stolen jewellery had been recovered from one Muthukumar, who has neither been arrayed as an accused nor examined as a witness. He would submit that even the name of Muthukumar does not find place in the portion of the confession now sought to be marked.

19. Thus, according to the learned counsel, the proposed evidence is neither admissible nor necessary, and the learned Trial Court erred in mechanically allowing the petition without properly addressing the issue of admissibility or necessity.

Arguments on the side of the respondent:

20. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the challenge to the impugned order is wholly misconceived. He would submit that the power under Section 311 Cr.P.C., 1973, is of the widest amplitude



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and may be exercised at any stage of the inquiry, trial or other proceeding, if the evidence sought to be brought on record appears to be essential for the just decision of the case.

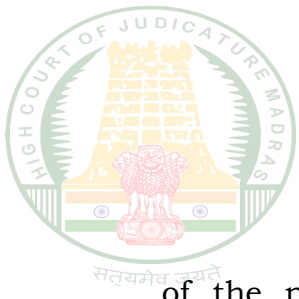
21. The learned Additional Public Prosecutor relied upon the judgments of the Hon'ble Supreme Court in ***Mohanlal Shamji Soni vs. Union of India and Another***² and ***Varsha Garg vs. State of Madhya Pradesh and Others***³, to contend that even after closure of evidence, the Court retains the power to permit recall and re-examination of a witness, provided such course is warranted in the interest of justice.

22. The learned Additional Public Prosecutor would further submit that the judgment in ***Murugan's case***⁴ itself recognises that such portion of the statement as distinctly relates to a fact thereby discovered would be admissible. He would submit that the portion sought to be marked in the present case had led to the identification

² 1991 Supp (1) SCC 271

³ 2023 (19) SCC 646

⁴ Supra



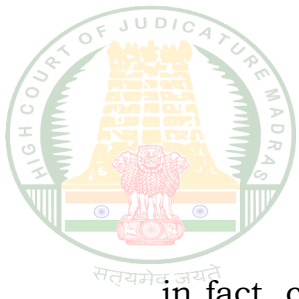
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of the person with whom the stolen jewels had been sold and consequently to the recovery of the stolen jewellery.

23. It is his specific submission that what is sought to be marked is not the entire confession but only the limited admissible portion that led to discovery of a relevant fact. According to him, the petitioner cannot preemptively object to the recall itself by raising the issue of evidentiary value, for the same can always be tested during cross-examination and at the stage of appreciation of evidence.

24. The learned Additional Public Prosecutor also defended the alleged delay by submitting that the prosecution was not at fault. He would submit that the petitioner had absconded and that a non-bailable warrant had been pending for several months. Subsequently, the petitioner was apprehended in another theft case, a prisoner transit warrant was obtained, and she is now in judicial custody.

25. He also drew the attention of this Court to paragraph 8 of the impugned order and submitted that the learned Magistrate had,



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in fact, considered the relevancy of the portion sought to be marked and had expressly recorded that the same was relevant in the interest of justice and that no prejudice would be caused to the accused. On these grounds, the learned Additional Public Prosecutor sought dismissal of the present petition.

26. Heard the learned counsels on either side and carefully perused the materials available on record.

Point for consideration:

27. In the light of the rival submissions, the following point arises for consideration in this Criminal Original Petition:

Whether the order passed by the learned Judicial Magistrate No.I, Kovilpatti, in Crl.M.P.No.1603 of 2025 in C.C.No.111 of 2013, dated 15.12.2025, permitting recall and re-examination of P.W.10 under Section 311 Cr.P.C., 1973, warrants interference in exercise of the jurisdiction of this Court under Section 528 of BNSS, 2023?



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Analysis:

28. The power under Section 311 Cr.P.C., 1973, is intended to equip the criminal Court with sufficient authority to summon, recall or re-examine any witness at any stage of the proceedings, if the Court finds that such evidence is essential to the just decision of the case. The provision is couched in wide terms and is primarily aimed at enabling the Court to discover the truth and render substantial justice.

29. It is indeed true that the said power cannot be exercised in a casual manner. It cannot be invoked merely to fill up lacunae or patch up the weak portions of the prosecution case. Equally, it cannot be denied merely because the application is filed at a late stage, if the Court is otherwise satisfied that the evidence sought to be adduced is relevant and necessary.

30. In the present case, the challenge is to an interlocutory order by which the learned Magistrate has merely permitted the recall and re-examination of the Investigating Officer. The impugned order does not amount to automatic proof or acceptance of the



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evidentiary value of the document or statement sought to be marked.

It only enables the prosecution to place the material before the Court through a competent witness, leaving it open to the accused to object, cross-examine, and contest its admissibility and probative value.

31. The contention of the petitioner that the portion sought to be marked is wholly inculpatory and therefore inadmissible is undoubtedly a serious submission. However, the issue as to whether a particular portion of a confession is admissible under Section 27 of the Evidence Act, and if so to what extent, is ultimately a matter that can be tested on the basis of the exact context in which it is sought to be proved, the recovery said to have followed, and the other surrounding materials on record.

32. At this stage, this Court is not required to undertake a roving adjudication on the final evidentiary worth of the statement. What is under challenge is only the order of recall. So long as the learned Magistrate has exercised jurisdiction on relevant considerations, namely, that the portion sought to be marked is



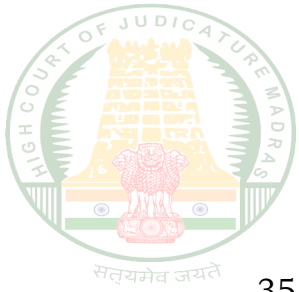
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stated to have nexus with recovery and that the accused would not be prejudiced since an opportunity of cross-examination would be available, this Court would be slow to interfere.

33. The reliance placed by the petitioner upon the judgment in ***Murugan and Others vs. State***⁵ is also not of decisive assistance at this interlocutory stage. The legal proposition laid down therein concerning admissibility of inculpatory and discovery portions is well settled. However, whether the impugned statement in the present case is wholly inadmissible or partly admissible is a matter which can be effectively considered by the learned trial Court at the stage of appreciation of evidence after the witness is recalled and examined.

34. This Court also finds force in the submission of the learned Additional Public Prosecutor that paragraph 8 of the impugned order reflects application of mind by the learned Magistrate to the relevancy of the proposed evidence. It cannot therefore be said that the order is bereft of reasons or has been passed mechanically.

⁵ *Supra*



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35. The argument regarding delay, though not without substance, does not by itself vitiate the order. The chronology of the case does indicate that the matter is old and that the recall petition was filed after the examination of P.W.10 had long since concluded. Yet, mere delay cannot be elevated into an absolute bar under Section 311 Cr.P.C., 1973, when the statute itself permits exercise of the power “at any stage” and when the Court considers the evidence necessary for the just decision of the case.

36. The petitioner would also contend that Muthukumar, from whom the jewels were allegedly recovered, is neither an accused nor a witness, and that his name is absent in the portion sought to be marked. These are certainly aspects that may have a bearing on the ultimate appreciation of evidence and the strength of the prosecution case. But those considerations cannot, by themselves, render the order of recall illegal.

37. Interference under Section 528 of BNSS with an order of this nature would be justified only when the order is patently without jurisdiction, manifestly perverse, or demonstrably resulting



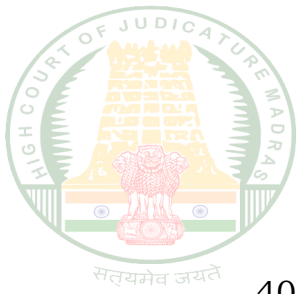
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in miscarriage of justice. On the materials placed before this Court, no such infirmity is made out.

38. On the contrary, permitting recall of P.W.10 would afford a fuller opportunity to both sides. The prosecution may attempt to establish the relevance of the omitted portion, while the defence would retain the right to cross-examine the witness, object to admissibility, and urge all legal contentions before the learned trial Court. Such course would subserve the ends of justice more appropriately than foreclosing the prosecution at the threshold. Therefore, this Court is of the considered view that the impugned order does not warrant interference.

39. Criminal Courts are not merely forums of procedural compliance; they are institutions entrusted with the solemn duty of arriving at the truth through fair adjudicatory processes. Section 311 Cr.P.C., 1973, is one such enabling provision, meant to ensure that the Court is not rendered helpless in the face of omission, inadvertence or incompleteness in evidence, provided the power is exercised judicially and without prejudice to the accused.



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40. In the present case, the order under challenge is only one permitting recall of the Investigating Officer for limited re-examination. The petitioner will have full opportunity to raise objections as to admissibility, relevance and evidentiary value before the learned trial Court. At this stage, no exceptional ground is made out for this Court to interdict the course adopted by the learned Magistrate.

41. In the result, this Criminal Original Petition stands dismissed. The order passed by the learned Judicial Magistrate No.I, Kovilpatti, in Crl.M.P.No.1603 of 2025 in C.C.No.111 of 2013, dated 15.12.2025, is hereby confirmed.

42. It is made clear that all contentions of the petitioner regarding admissibility, evidentiary value, and the applicability of Section 27 of the Evidence Act are left open to be raised before the learned trial Court at the appropriate stage, and the learned trial Court shall consider the same on their own merits and in accordance with law, uninfluenced by any observation made in this order except



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for the purpose of deciding the present petition. Consequently,
connected miscellaneous petition is closed.

21.04.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

- 1.The Judicial Magistrate No.I,
Kovilpatti.
- 2.The Inspector of Police,
Kovilpatti East Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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