



CRL OP(MD). No.2654 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 10/02/2026

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THE HONOURABLE MRS. JUSTICE L. VICTORIA GOWRI

CRL OP(MD). No.2654 of 2026
and
CRL MP(MD)No.2945 of 2026

Karthick @ Maranakarthick

... Petitioner / Accused No.4

Vs

The State represented by
The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District.
(Crime No.31 of 2024)

... Respondent / Complainant

PRAYER :-

To set aside the order passed by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur in Cr.MP.No. 3865 of 2025 in SC.No.117 of 2024 dated 06.01.2026.

For Petitioner : Mr.SMA.Jinnah

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition is filed to set aside the order passed by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur in Cr.MP.No.3865 of 2025 in SC.No.117 of 2024 dated 06.01.2026.

2. The learned counsel for the petitioner submitted that the petitioner is the fourth accused before the learned trial Court in S.C.No. 117 of 2024. He had filed a petition under Section 348 of BNSS, to recall the prosecution witnesses P.W.1 to P.W.7 for the purpose of further cross examination. However, the same was rejected by the learned trial court and hence this petition.

3. Learned Additional Public Prosecutor submitted that there is no infirmity in the order passed by the learned trial court, for the reason that the petitioner who is the 4th accused had previously appointed a counsel of his choice who had conducted cross examination of PW.1 to PW.6 in detail. However, the present petition to recall and reexamine PW.1 to PW.6 has been filed on the mere ground of change of counsel. It has been



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time and again held by various Courts including the Hon'ble Apex Court that change of counsel cannot be a ground for seeking recall and recross examination of witnesses and relying upon the cases of ***Neha Begum and others Vs The State of Assam in Special Leave to Appeal (Crl.)No. 3910 of 2024*** he insisted the said point and sought for dismissal of the Criminal Original Petition.

4. Heard either sides and carefully perused the materials available on record.

5. Though the learned counsel for the petitioner categorically contended that for the alleged offence which occurred in the year 2024, the trial has commenced in the year 2025 and now it is February, 2026. In the meanwhile, the petitioner has filed a proper petition before the learned trial Court not only on the ground of change of counsel, but also pointing out clearly that P.W.1 to PW.6 were not properly cross examined by the previous counsel, with respect to vital aspects and material aspects. The same ere left unchallenged in cross examination which has gone to the root of the case and had failed to elicit the essentials of the truth. Further, he categorically contended that to arrive



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at a just decision of a case as propounded under Section 348 of BNSS, an application under the said section can be made at any point of trial by the parties concerned and in the instant case it is not too late. When the petitioner has filed an application for the ends of justice, the application ought to have been allowed by the learned trial Court. On the other hand, the learned Trial Court had dismissed the same in a very unwarranted manner.

6. However, a careful perusal of the materials available on record would reveal the fact that the pending case before the learned trial Court is a murder case. No doubt the earlier counsel was a counsel of the petitioner's own choice and he had duly cross examined PW1 and PW6 and it is only the observation of the present counsel for the petitioner that cross examination has not been conducted properly by the previous counsel. Petition filed before the learned Trial Court is bereft of those particular vital points, aspects and material facts which were left unchallenged by the earlier counsel which had gone to the root of the case, defeating to arrive at a just decision of the case by the learned trial Court.



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7. The learned Additional Public Prosecutor had rightly relied upon the case of ***State (NCT of Delhi) Vs. Shiv Kumar Yadav and another¹*** and the relevant portion of the same is extracted as follows :

"15. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a re-trial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. The witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sen-sitive cases such as the present one. It can result in undue hardship for the vic-tims, especially so, of heinous crimes, if they are required to repeatedly appear in court to face cross-examination."

¹ 2016 (2) SCC 402



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8. He also relied upon the case of ***Neha Begum and others Vs The State of Assam and another, in Special Leave to Appeal (Crl.)No. 3910 of 2024 dated 02.09.2024*** and the relevant portion of the same is extracted as follows :

" 5. The thrust of the submissions made on behalf of the accused petitioners in support of the prayer to recall and allow further cross-examination of the prosecution witnesses was that their erstwhile engaged lawyer had not properly cross examined the witnesses.

8. On a perusal of the subject application filed by the petitioners in the trial Court by invoking the provisions under Section 231(2) read with Section 311 Cr.PC, we find that other than a vague aspersion that the erstwhile lawyer engaged by the petitioners did not conduct proper cross-examination of the witnesses, no such specific ground was alluded on behalf of the accused petitioners which could be considered to be a valid ground for the trial Court to invoke the power under Section 311 Cr.P.C.,"

9. Fully fortified by the aforesaid judgments, even in the instant case, a careful perusal of the petition filed by the petitioner before the learned trial Court would make it clear that other than vague submissions



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that the erstwhile lawyer engaged by the petitioner did not conduct the cross examination properly, no probable and vital aspects of the failure on the part of the erstwhile lawyer has been digged out by the present counsel by filing this application. I do not find any infirmity in the impugned order, and the same is confirmed.

10. Accordingly, this Criminal Original Petition is dismissed.
Consequently, connected miscellaneous petition is closed.

10.02.2026

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

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To

- 1.The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District.
- 2.The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputhur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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L. VICTORIA GOWRI,J

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ORDER
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