



Crl.OP(MD)No.3541 of 2024 & 3298 of 2024

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 02.01.2026**

**CORAM**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**Crl.O.P.(MD).Nos.3541 and 3298 of 2024**  
**and**  
**Crl.M.P.(MD)Nos.2619 and 2801 of 2024**

G.Ramesh Kumar, ... Petitioner/Respondent/Accused

**Vs.**

State of Tamilnadu  
Rep. through Inspector of Police,  
CBCID, Nagercoil,  
Kanyakumari District. ... Respondent/Petitioner/Complainant

**Prayer in Crl.O.P.(MD)No.3541 of 2024:** Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records relating to Crl M.P No. 5269 of 2019 in Spl S.C No. 64 of 2023 (Spl C.C No. 3/2019 of CJM Court) dated 02.02.2024 on the file of the learned Principal Sessions Judge, Kanniyakumari District at Nagercoil and set aside the same.

**Prayer in Crl.O.P.(MD)No.3298 of 2024:** Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records relating to Crl M.P No. 5268 of 2019 in Spl S.C No. 64 of 2023 (Spl C.C No. 3/2019 of CJM Court) dated 02.02.2024 on the file of the learned Principal Sessions Judge, Kanniyakumari District at Nagercoil and set aside the same.



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For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.S.Ravi,  
Additional Public Prosecutor

**COMMON ORDER**

***Preface:***

The present Criminal Original Petition has been filed invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, calling in question the correctness and legality of the order dated 02.02.2024 passed by the learned Principal Sessions Judge, Kanniyakumari District at Nagercoil, in Crl.M.P. Nos.5268 and 5269 of 2019 in Spl.S.C. No.64 of 2023 (formerly Spl.C.C. No.3 of 2019).

2. By the impugned common order, the learned Trial Judge allowed the petitions filed by the prosecution under Sections 311 and 242(3) Cr.P.C., 1973, permitting recall of P.W.1 for further examination-in-chief and directing receipt of a Compact Disc as a material exhibit, though the witness had already been examined and cross-examined several years earlier.



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3. The petitioner/accused assails the said order on the ground that the same enables the prosecution to fill up lacunae after an inordinate lapse of time and seeks to introduce an electronic document of doubtful origin and authenticity, without examining its author, thereby causing grave prejudice to the defence.

***Case of the prosecution:***

4. The prosecution case, in brief, is that two crimes came to be registered by the Arumanai Police Station, namely:

- (i) Crime No.191 of 2011 for offences under Section 4 of the Explosive Substances Act and Section 4(1)(A) of the MMDR Act; and
- (ii) Crime No.192 of 2011 for offences under Sections 353 and 506(ii) IPC.

5. After investigation, charge sheets were filed, and the cases were taken on file as S.C. No.179 of 2016 (later renumbered as Spl.S.C. No.126 of 2022) and Spl.C.C. No.3 of 2019 (later renumbered as Spl.S.C. No.64 of 2023). P.W.1, namely Narayana Dass, Tahsildar, was examined in the case in Spl.C.C. No.3 of 2019 and as P.W.2 in the connected Sessions Case. His examination-in-



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chief took place on 23.07.2015, and he was elaborately cross-examined on 27.06.2017.

6. During the pendency of the trial, the prosecution filed Crl.M.P. No.5268 of 2019 under Section 311 Cr.P.C., 1973 to recall P.W.1 and Crl.M.P. No.5269 of 2019 under Section 242(3) Cr.P.C., 1973, to receive a Compact Disc allegedly depicting the occurrence, contending that P.W.1 had referred to the said Compact Disc in his statement recorded under Section 161(3) Cr.P.C., 1973, in Crime No. 191 of 2011, but that the same was inadvertently not filed along with the final report.

***Grounds for setting aside the impugned order:***

7. The petitioner/accused contends that:

a) The impugned order is contrary to law, weight of evidence, and settled principles governing recall of witnesses.

b) P.W.1 had already been examined and cross-examined in detail, and the recall sought after nearly five years is only to fill up lacunae.



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c) P.W.1 is not cited as a witness for the purpose of marking the Compact Disc in the present case, rendering the prosecution's attempt legally untenable.

d) There is no explanation as to why the Compact Disc was not filed along with the final report, despite the alleged reference during investigation.

e) The two crimes, though arising from the same incident, are distinct in nature, and material collected in one case cannot be mechanically imported into another.

f) The Compact Disc is allegedly edited, doctored, and lacks originality, and its author is stated to be a media reporter who has not been examined.

g) The learned Trial Judge, having noticed the objections relating to genuineness, erred in allowing the petition without recording cogent reasons.

***Submissions:***

8. The learned counsel for the petitioner submitted that the Compact Disc is said to have been recorded by a media reporter, whose identity is neither disclosed nor proved, and who has not been



examined at any stage. It was argued that without examining the author of the electronic record and without compliance with the mandatory requirements of the Evidence Act, including proof of authenticity, the Compact Disc cannot be permitted to be marked through P.W.1. The learned counsel further submitted that permitting recall after a lapse of several years seriously prejudices the defence and defeats the right of the accused to a fair trial, especially when the prosecution had ample opportunity earlier.

9. Per contra, the learned Additional Public Prosecutor contended that both cases arise out of the same incident and were transferred for joint trial, and therefore, material collected in one case is relevant to the other. It was submitted that P.W.1 himself is the author of the Compact Disc as per the prosecution version, and the objections regarding genuineness and admissibility can be raised and adjudicated during trial.

10. The learned Additional Public Prosecutor emphasized that the power under Section 311 Cr.P.C., 1973, is wide and intended to enable the Court to discover the truth, and that no illegality or perversity is found in the impugned order.



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

***Points for consideration:***

12. The following points arise for consideration:

i) Whether the learned Trial Judge was justified in permitting recall of P.W.1 after a lapse of several years?

ii) Whether the reception of the Compact Disc at this stage amounts to permitting the prosecution to fill up lacunae?

iii) Whether the impugned order suffers from illegality or perversity warranting interference under Section 482 Cr.P.C., 1973?

***Analysis:***

13. It is well settled that the power under Section 311 Cr.P.C., 1973, is to be exercised sparingly and with circumspection. While the Court is duty-bound to elicit the truth, such power cannot be invoked to enable a party to repair the weaknesses in its case. In the present case, P.W.1 was examined in chief as early as in the year 2015 and was extensively cross-examined in 2017. The prosecution had full knowledge of the alleged Compact Disc even during



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investigation, yet failed to produce it along with the final report or during the examination of P.W.1.

14. The explanation of “inadvertence” offered by the prosecution remains unsubstantiated. More importantly, the statement under Section 161 Cr.P.C., 1973, recorded in the present case does not even refer to the Compact Disc, and the attempt is to rely upon a statement allegedly made in another crime. The objections raised by the accused regarding the authorship, originality, and alleged editing of the Compact Disc are not frivolous. When the prosecution itself admits that the Compact Disc was allegedly obtained from a media reporter, non-examination of the said person assumes significance.

15. While the learned Trial Judge has observed that admissibility and genuineness can be tested at a later stage, this Court is of the view that the threshold issue as to whether such belated introduction should be permitted at all, particularly after completion of cross-examination, has not been adequately



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addressed. The right of the accused to a fair and expeditious trial is a constitutional guarantee under Article 21. Allowing recall and introduction of new material after long delay, without sufficient justification, tilts the balance unfairly against the accused.

16. This Court finds that the impugned order dated 02.02.2024 permitting recall of P.W.1 and reception of the Compact Disc suffers from legal infirmity and has resulted in prejudice to the petitioner. The learned trial Judge failed to appreciate that the present attempt of the prosecution goes beyond eliciting truth and amounts to filling up lacunae after an inordinate delay. Criminal trials must strike a delicate balance between the quest for truth and the protection of the accused from unfair prejudice. Procedural powers conferred upon Courts are intended to advance justice, not to undo procedural discipline. Courts must therefore remain vigilant to ensure that such powers are not invoked to the detriment of fairness and finality.

17. In the result, the Criminal Original Petitions are allowed. The common order dated 02.02.2024 passed in Crl.M.P. Nos.5268



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and 5269 of 2019 in Spl.S.C. No.64 of 2023 by the learned Principal Sessions Judge, Kanniyakumari District at Nagercoil is set aside. Consequently, the petitions filed by the prosecution under Sections 311 and 242(3) Cr.P.C. stand dismissed. Consequently, the connected miscellaneous petitions are closed.

18. It is made clear that the learned Trial Court shall proceed with the trial in accordance with law, uninfluenced by any observations made herein.

**02.01.2026**

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

To

- 1.The Principal Sessions Judge,  
Kanniyakumari District at  
Nagercoil.
2. The Inspector of Police,  
CBCID, Nagercoil,  
Kanyakumari 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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**and**  
**3298 of 2024**

**02.01.2026**