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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2026

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

Crl.OP.(MD)No.5478 of 2026

and

Crl.M.P(MD)No.5909 of 2026

Yovan

...Petitioner

Vs

Rajasekar

...Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS Act, 2023, to call for the records pertaining to the order passed in Crl.MP.No.33 of 2025 in CA.No.24/2025 before the Additional District and Sessions Judge, Aruppukottai, dated 12.02.2026 and set aside the same and allow the criminal original petition and to recall the complainant to cross examine on the side of the petitioner/accused.

For Petitioner

: M/s.A.John Vincent



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ORDER

The present petition has been filed by an Appellant in C.A.No.24 of 2025 on the file of the Additional District and Sessions Court, Arupukkottai, challenging the order passed on 12.02.2026 in CrI.M.P.No.33 of 2025 wherein the application filed by the petitioner under Section 311 of Cr.P.C. has been rejected.

2. The petitioner herein is an accused in C.C.No.111 of 2022 on the file of the learned Judicial Magistrate, Aruppukottai, wherein it was filed under Section 138 of the Negotiable Instruments Act. The petitioner has not chosen to cross examine the defacto complainant and the petitioner was ultimately convicted. Challenging the same, the petitioner has preferred C.A.No.24 of 2025.

3. Pending appeal, the petitioner has filed the Miscellaneous Petition under Section 311 of Cr.P.C. seeking the permission of the Court to recall P.W.1, for the purpose of cross examination. The said application has been dismissed by the appellate Court. Challenging the same, the present petition has been filled.



4. A perusal of the application filed by the petitioner reveals that the petitioner has simply stated that due to some mistake, P.W.1 was not cross examined and unless he is permitted to cross examine him in the appellate stage he will be put to great prejudice. Therefore, it is clear that no proper reason has assigned for not cross examining of P.W.1 at the trial stage. In such circumstances, the first appellate Court cannot be found fault with for rejecting the application that was filed in the appellate stage. Even though the learned Counsel appearing for the petitioner has relied upon Section 432 of BNS, 2023, the said provision can be invoked only if the Court is satisfied that additional evidence is necessary.

5. In the present case, the first appellate Court has categorically found that the petitioner due to his fault, has not chosen to cross examine P.W.1 and in such circumstances, not cross examining the P.W.1 during the trial stage cannot be set right by the accused person by filing 311 application before the appellate Court.

6. There are no merits in the petition. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is also closed.

17.03.2026

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



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R.VIJAYAKUMAR, J.

RJR

To

The learned Additional District and Sessions Judge,
Aruppukottai.

Crl.OP.(MD)No.5478 of 2026

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