

**IN THE COURT OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE,
COIMBATORE.**

**Present: Tmt. G. VIJAYA, B.A., M.L., PGDCFS,
PRINCIPAL DISTRICT & SESSIONS JUDGE, COIMBATORE**

Tuesday, this the 27th day of January, 2026

(திருவள்ளூர்வராண்டு, 2057, விசுவாவசு தை திங்கள் 13-ஆம் நாள் செவ்வாய்கிழமை)

M.P.Nos.13/2025, 14/2025 and 15/2025 in S.C.No.195/2017

Jaffer Ali @ Jafer (A-5)

... Petitioner in M.P.No.13/2025 / Accused

1. Akram Zindha (A-1) (Aged 32 years)

S/o.Subhakani,
D.No.58/2, Sumaiya Manzil,
Fathima Nagar, Saramedu,
Coimbatore.

2. Samsudheen (A-3) (Aged 35 years)

S/o.Umar,
D.No.26/2, Bilal Estate 2nd Street,
Coimbatore.

3. Abdul Munaf (A-6) (Aged 38 years)

S/o.R.M.Abdul Salam,
D.No.37/40, New Colony,
Saraimedu, Tippu Nagar,
Coimbatore.

... Petitioners in M.P.No.14/2025 / A-1, A-3 and A-6

1. Sadam Hussain (A-2) (Aged 35 years)

S/o.Abdul Nazar,
D/o.26/2, Bilal Estate 2nd Street,
Coimbatore.

2. Anu @ Ansathf (A-4) (Aged 37 years)

S/o.Meerankutty,
D.No.5, Sri Ram Nagar,
Podanur, Coimabtoe.
Now at 125, Aringer Anna Nagar,

Ukkadam, Bypass Road,
Coimbatore.

... Petitioners in M.P.No.15/2025 / A-2 and A-4

/vs/

The State rep. by
The Deputy Superintendent of Police
CBCID,
Coimbatore.

... Respondent / Complainant

These three petitions came on 12-01-2026 for final hearing before this Court in presence of **Tvl.M/s.S.Xavier Felix, F.Camilus Selva, M.Mubeen, Shaikh M.Mzzammil, F.Jescintha Sheela, F.Bertila Amali and M.Sabina Sathya**, Advocates for the Petitioner in M.P.No.13/2025 / Accused and of **Tvl.M.Palanichamy, A.Anand, A.Maharajan, R.Prasanna and K.R.Dhiviya**, Advocates for the Petitioners in M.P.No.14/2025 / A-1, A-3 and A-6 and of **Thiru.K.R.Sankaran**, Advocate for the Petitioners in M.P.No.15/2025 / A-2 and A-4 and of **Thiru.T.A.Selvaraj, Special Public Prosecutor, Anti-Terrorism Squad**, for the State, upon hearing both side arguments, perusing petitions, counter and other relevant records, having stood over for consideration till this date, this Court made the following:

COMMON ORDER

These three petitions have been filed by the petitioners in the respective petitions / Accused No.1 to 6, under section 311 of Cr.P.C. / u/s.348 of BNSS to recall P.W.1 Rashida, for further cross examination.

2. In the petition in M.P.No.13/2025, the petitioner / A-5 averred that, in this case, occurrence was said to have been taken place on 16-03-2017. On 24-09-2024, one Rashida was examined as P.W.1 and she was cross examined on the same day on behalf of the petitioner / accused. The above said witness was not examined on very vital and crucial aspect of the defence. It is necessary to recall the said witness to prevent failure of justice, but not to fill up the lacuna in the evidence or to harass the witness. During the course of cross examination held on 24-09-2024, the material aspects of the defence could not be properly put the witness P.W.1. In the absence of proper further cross examination, it will cause grave prejudice to the defence. In the catena of decisions of the Hon'ble Supreme Court has held that, in the event of circumstances when the judgment should not be rendered on inchoate inconclusive and speculative presentation of facts, as thereby the ends of justice could be defeated, the witness shall be recalled. It is vital for finding out the truth or obtaining property proof for such facts, which will lead to a just and correct decision of the case, P.W.1 is necessarily to be recalled in order to arrive at a just decision of the case which would determine the truth and to render the just decision. The evidence that is likely to be rendered in the recalling of P.W.1 would be german to the issue involved and also ensured that an opportunity of rebuttal is given to the defence and hence, the petitioner filed the present petition.

3. In the petition in M.P.No.14/2025, Accused No.1, 3 and 6 averred that, the petitioners have been charged for the alleged offences u/s.120(B), 147, 148, 302 r/w 149, 34 of IPC and u/s.15(1)(a)(i), 16, 18, and 20 of UAPA Act, 1967 r/w Sec.153(A) of IPC and P.W.1 Rasitha was examined before this Court on 24-09-2024. The above said witness was not cross examined in full and certain vital questions are inadvertently left off and father-in-law of the said witness namely Ameen (P.W.5) is examined today to corroborate P.W.1 and hence, with regard to the admissions made by P.W.5 are to be confronted with P.W.1 failing which it will result in miscarriage of justice. Hence, P.W.1 is to be recalled for the purpose of cross examination by the above said accused, failing which, it will result in violation of the constitution and the petitioners / accused are ready to pay bata for the said witness and prays to allow the petition.

4. In the petition in M.P.No.15/2025, Accused No.2 and 4 averred that, in this case, the petitioners have been charged for the alleged offences u/s.120(B), 147, 148, 302 r/w 149, 34 of IPC and u/s.15(1)(a)(i), 16, 18, and 20 of UAPA Act, 1967 r/w Sec.153(A) of IPC and P.W.1 Rasitha was examined before this Court on 24-09-2024. Due to omission of some vital points and insufficient information received by the accused, the above witness (P.W.1) was not cross examined in full. Therefore, it is necessary to recall P.W.1 for the purpose of cross examination by the accused for the proper appreciation of evidence, failing which, it will result in miscarriage of justice.

5. **Brief averments contained in the common counter of the prosecution:-**

(a) The present case arises out of the brutal premeditated murder of one Farooq, S/o.Hameed, residing at No.63/2, Bilal Estate, 1st Street, South Ukkadam, Coimbatore which occurred on 16-03-2017. The deceased was an active member of the Dravida Viduthalai Kazhagam (DVK), an atheist, and vocal rationalist who frequently expressed his views against superstitious practices through social media platforms, including Facebook. His rationalist and reformist ideologies had provoked deep resentment among the accused persons A-1 to A-6, who perceived him as threat to their religious and ideological convictions. Provoked by the conduct and public expressions of the deceased which they considered offensive to their religious beliefs, the accused collectively conspired to eliminate him.

(b) Due to the above activities of Farooq, accused A-1 to A-6 were aggrieved and decided to murder him considering his views against Islam. In continuation to their plan, on the night of 16-03-2017, at around 23.30 hours, Farooq received a phone call from A-6-Abdul Munaf asking him to come to Municipality Slaughter House, Ukkadam. He left his home on his two wheeler (TVS XL Super, Reg.No.TN 38 AV 5974) and while he was travelling near Ukkadam Bypass, Pullukadu Road, near the Municipality Slaughter House, he was way laid and brutally assaulted by A-1 (Akram Zindha), A-2 (Sadam

Hussan), A-3 (Samsudeen), A-4 (Ansath), A-5 (Jaffar Ali) and A-6 (Abdul Munaf) with deadly weapons. They inflicted multiple grievous stab and cut injuries, resulting in death of Farooq at the spot.

(c) Based on a written complaint from Rasheetha, a case was registered at B-1 Police Station, Coimbatore in Crime No.258/2017, u/s.302 of IPC. Subsequently on 20-03-2017, A-2 (Sadam Hussain @ Sadam), A-3 (Samsudeen @ Samsu @ Koolai Samsu, A-4 (Ansath @ Anu) surrendered before the learned Judicial Magistrate No.5, Coimbatore, in connection with the murder of Farooq. Later on 21-03-2017, the remaining accused A-1(Akram Zindha), A-5 (Jaffar Ali @ Jaffer) and A-6 (Abdul Munaf) were arrested by the Inspector of Police, B-1 Bazaar PS, Coimbatore City and remanded to judicial custody.

(d) Thereafter, the case was transferred to the Special Investigation Division (SID), CBCID vide RC No.44004/Crime3(1)(2017), dated 04-04-2017, issued by the Director General of Police, Tamil Nadu, Chennai and RC No.C6/89/05710/2017, dated 11-04-2017, issued by the Additional Director of Police, CB-CID, Chennai-4. Accordingly, the case was re-registered in Coimbatore City CBCID as Crime No.03/2017 under sections 302 of IPC and was taken up for further investigation by the SID-CBCID Coimbatore.

(e) Based on the evidence collected during the course of investigation, the offences were altered and provisions of the Unlawful Activities (Prevention) Act, 1967 (UAPA) were invoked against the accused. Accordingly the charges were altered to Sections 120(B), 147, 148, 302 r/w 149 and 34 of IPC and Sections 15(1)(a)(i), 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 r/w Section 153(A) of IPC. Sanction for prosecution under section 153(A) of IPC and Sections 15, 16, 18 and 20 of the Unlawful Activities (Prevention) Act were obtained from the competent authority. Subsequently, the Final Report was filed on 12-09-2017 before this Court and this Court took cognizance in S.C.No.195/2017.

(f) A-1, A-3, A-4 and A-5 were released on bail with the stringent by this Court vide CrI.M.P.No.2359/2017, dated 10-10-2017, and CrI.M.P.No.1698/2017, dated 27-07-2017. Further A-2 and A-6 were enlarged on bail with stringent conditions by the Hon'ble High Court of Madras in CrI.O.P.No.9230/2018, dated 28-04-2018 and CrI.O.P.No.23736/2017 dated 16-06-2018 respectively.

(g) Thereafter, on 08-08-2022, charges were framed against the accused A-1 to A-6 in the following manner:-

S.No.	Accused Name	Charges
1	A-1 Akram Zinda	120(B), 148, 302, 341, 153(A) of IPC Sec.15(1)(a)(i), 16, Section 18, Section

		20 of Unlawful Activities of (Prevention) Act 1967.
2	A-2 Sadham Hussain	120(B), 148, 302, 341, 153(A) of IPC, Section 15(1)(a)(i), 16, Section 18, Section 20 of Unlawful Activities of (Prevention) Act, 1967.
3	A-3 Samsudeen	120(B), 148, 302, 341, 153(A) of IPC, Section 15(1)(a)(i), 16, Section 18, Section 20 of Unlawful Activities of (Prevention) Act, 1967.
4	A-4 Anshat	120(B), 148, 302, 341, 153(A) of IPC, Section 15(1)(a)(i), 16, Section 18, Section 20 of Unlawful Activities of (Prevention) Act, 1967.
5	A-5 Jaffer Ali	120(B), 147, 149, 153(A) of IPC, Section 15(1)(a)(i), 16, Section 18, Section 20 of Unlawful Activities of (Prevention) Act, 1967.
6	A-6 Munaf	120(B), 147, 149, 153(A) of IPC, Section 15(1)(a)(i), 16, Section 18, Section 20 of Unlawful Activities of (Prevention) Act, 1967.

(h) The trial in the present case commenced on 22-09-2024. In the course of the proceedings, the following prosecution witnesses have been examined in full, including both chief and cross examinations: PW-1 Tmt.Rasheeth, was examined on 24-09-2024. PW-2 Thiru.Soundarajan was examined on 16-10-2024. PW-3 Thiru.Abuthaqir and PW-4 Thiru.Sulaiman were examined on 19-11-2024.

(i) On 19-11-2024, during the trial proceedings in S.C.No.195/2017, before this Court, one Thiru.M.Nehrudass, aged 38 years, S/o.Masanadurai, who is cited as LW-48 in the present case, visited Court to meet the learned Special

Public Prosecutor and inform him about his inability to appear before this Court until December-2024. At that time, the said Thiru.M.Nehrudass was standing near the veranda at the corner of the Court premises, all the accused in this case, who were present inside the Court room, came out and upon seeing him, began to abuse him verbally and issued threat to his life. They warned him that if he continued to cooperate and testify as a prosecution witness, he would be eliminated in the same manner as the deceased Farooq. Furthermore, the father of A-1 (Akram Zinda) namely Thiru.Subakani, who was also present in the Court premises, attempted to physically assault LW-48 and threatened him with serious consequences, thereby causing intimidation and fear to the witness.

(j) In view of the above incident, the said witness Thiru.M.Nehrudass, who was under severe mental trauma and fear for his life, lodged a complaint before the Coimbatore City C-2 Race Course Police Station. Based on the same, a case was registered in Crime No.558 of 2024, under section 189(2), 232 and 351(3) of BNS, 2023 against the accused persons A-1 to A-6 and the father of A-1. Further section 191(1), 126(2), 232(1), 351(3), 131 r/w 190 BNS and Section 22 of UAPA were invoked on 03-09-2025. In light of serious nature of the threats and the attempt to obstruct the course of justice by intimidating a prosecution witness, the prosecution on the same day 19-11-2024 filed an application u/s.44 of the Unlawful Activities (Prevention) Act, 1967, seeking appropriate witness protection measures for crucial prosecution witnesses.

(k) The prosecution filed a petition for cancelation of bail in C.M.P.No.6879/2024, on 22-11-2024 before this Court and by order dated 13-12-2024, this Court was pleased to allow the said petition, directing that A-1, A-3 and A-6 be remanded to judicial custody upon their surrender on 16-12-2024. In compliance with the said order, all the accused were subsequently remanded to judicial custody and are presently lodged in Coimbatore Central Prison, where they continue to remain in custody till date.

(l) In view of the acts of the accused in interfering with and intimidating witnesses in the present case, and based on the request made by the Prosecution, the Hon'ble High Court of Madras vide ROC No.27019/25/G4, dated 19-09-2025, was pleased to direct that the trial in the present case be conducted in a specially arranged secure venue within the Court premises, similar to the arrangement adopted during the Pollachi sexual assault case and that the trial be held on day to day basis to ensure the safety of witnesses and the expeditious disposal of the case.

(m) On 24-09-2024, P.W.1 Tmt.Rasheetha was examined in chief and cross examination and Ext.P-1 to Ext.P-4, P.M.O.1 to P.M.O.3 were marked and all the exhibits were identified by P.W.1 in open Court. During cross examination, the three defence counsels appearing for the accused posed elaborate, detailed and substantial. At this juncture, all the accused have filed the petition, seeking

to reopen and recall P.W.1 before this Court after lapse of more than one year from the date of her examination. The said petitions do not disclose any valid or bona fide reason as to why P.W.1 ought to be recalled, nor do they explain the inordinate delay in filing the same. The accused had already availed their full right of cross examination, during which P.W.1 was extensively questioned at length by all defence counsels. The present petition is bereft of particulars or justification and are evidently intended only to prolong and protract the trial proceedings and to cause further intimidation to the witnesses in this sensitive case.

(n) Further PW1 Rasheetha widowed woman solely responsible for the family, upbringing and welfare of her family including 2 children and dependent father, manages a small cloth shop in Coimbatore under severe financial and emotional strain. The cross examination conducted on 24-09-2024, though exhaustive, inflicted significant mental trauma, which was further aggravated by the incident happened on 19-11-2024 wherein threats were issued within the Court hall veranda against PW48, leaving PW1 in a state of intense fear and emotional distress. Repeated Court appearances gravely disrupt her livelihood and impose undue hardship. Recalling her at this juncture would only intensify her mental agony and suffering exposing her to renewed intimidation in a UAPA case, where witness silencing is a recognized threat. Such recall would also run contrary to the spirit of Section 44 of the Unlawful Activities (Prevention) Act,

which mandates individualized protection measures upon satisfaction of potential life endangerment. Further the recall petition is legally impermissible in light of the statutory safeguards governing protected witnesses, since there is no reason stated in the petition to recall which is filed by the accused. Further in this case, there is specific direction for the trial to be conducted on a day to day basis and the case pertains to an offence committed in the year 2017. The present application has been filed solely to obstruct the progress of the trial and to intimidate the witnesses under the guise of recall. The accused have been consistently employing dilatory tactics to delay the proceedings. There is no merit in this petition and the same is liable to be dismissed.

6. **Point for consideration:**

Whether P.W.1 is to be recalled or not? is the point for consideration.

POINT:-

7. Heard both sides and perused the relevant records. The petitioners in the respective petitions / Accused No.1 to 6 have filed these three petitions, praying to recall P.W.1 for further cross examination.

8. The learned counsel for the petitioner in M.P.No.13/2025 / accused would argue that in this case, one Rashida was examined as P.W.1 and she was cross examined on the same day on behalf of the petitioner / accused and the above said witness was not examined on very vital and crucial aspect of the defence

and hence, it is necessary to recall the said witness to prevent failure of justice, but not to fill up the lacuna in the evidence or to harass the witness. The learned counsel has further argued that during the course of cross examination held on 24-09-2024, the material aspects of the defence could not be properly put to P.W.1. In the absence of proper further cross examination, it will cause grave prejudice to the defence and prays to allow the petition.

9. The learned counsel for the petitioners in M.P.No.14/2025 would argue that, in this case, P.W.1 Rasitha was examined before this Court on 24-09-2024. The above said witness was not cross examined in full and certain vital questions are inadvertently left off and father-in-law of the said witness namely Ameer (P.W.5) is examined today to corroborate P.W.1 and hence, with regard to the admissions made by P.W.5 are to be confronted with P.W.1 failing which it will result in miscarriage of justice. Hence, P.W.1 is to be recalled for the purpose of cross examination by the above said accused, failing which, it will result in violation of the constitution and the petitioners / accused are ready to pay bata for the said witness and prays to allow the petition.

10. The learned counsel for the petitioners in M.P.No.15/2025 would argue that, in this case, P.W.1 Rasitha was examined before this Court on 24-09-2024. Due to omission of some vital points and insufficient information received by the accused, the above witness (P.W.1) was not cross examined in full.

Therefore, it is necessary to recall P.W.1 for the purpose of cross examination by the accused for the proper appreciation of evidence and prays to allow the petition.

11. The learned Special Public Prosecutor vehemently opposed to allow the petition and contended that, P.W.1 Tmt.Rasheetha was examined in chief and cross examination and Ext.P-1 to Ext.P-4, P.M.O.1 to P.M.O.3 were marked and she was elaborately cross examined by the three defence counsel appearing for the accused. The learned Special Public Prosecutor has further contended that the petitioners in the respective petitions / accused filed these petitions to reopen and recall P.W.1 after lapse of more than one year from the date of her examination. Further the petitioners in the respective petitions / accused has not disclosed any valid or bona fide reason as to why P.W.1 ought to be recalled, nor do they explain the inordinate delay in filing the same and the accused had already availed their full right of cross examination, during which P.W.1 was extensively questioned at length by all defence counsel. The learned Special Public Prosecutor has further contended that, the present petitions are bereft of particulars or justification and are evidently intended only to prolong and protract the trial proceedings and to cause further intimidation to the witnesses in this sensitive case.

12. The learned Special Public Prosecutor has further contended that, PW1 Rasheetha a widow is solely responsible for the family, upbringing and welfare of her family including 2 children and dependent father and also managing a small cloth shop in Coimbatore under severe financial and emotional strain. The learned Special Public Prosecutor has further contended that, cross examination conducted on 24-09-2024, though exhaustive, inflicted significant mental trauma, which was further aggravated by the incident happened on 19-11-2024 wherein threats were issued within the Court hall veranda against PW48, leaving PW1 in a state of intense fear and emotional distress and repeated Court appearances gravely disrupt her livelihood and impose undue hardship and recalling her at this juncture would only intensify her mental agony and suffering exposing her to renewed intimidation in a UAPA case, where witness silencing is a recognized threat and such recall would also run contrary to the spirit of Section 44 of the Unlawful Activities (Prevention) Act, which mandates individualized protection measures upon satisfaction of potential life endangerment. The learned Special Public Prosecutor has further contended that, in this case, there is specific direction for the trial to be conducted on a day to day basis and the case pertains to an offence committed in the year 2017. The present applications have been filed solely to obstruct the progress of the trial and to intimidate the witnesses under the guise of recall. The accused have been consistently employing dilatory tactics to delay the proceedings. There is no merit in the petitions and prayed to dismiss the

petitions. In support of his arguments, the learned Special Public Prosecutor relied on the judgment passed by the Hon'ble Apex Court in the case in **AG //vs// Shiv Kumar Yadav and another** [Criminal Appeal Nos.1187-1187 of 2015, dated 09-10-2015]. Further the learned Special Public Prosecutor relied on the order passed by the Hon'ble High Court of Madras in the case in **Shivasankar and another //vs// State represented by the Inspector of Police, Q Branch PS, Coimbatore** [CrI.O.P.No.24254/2025 and CrI.M.P.No.16596/2025, dated 03-09-2025] and represented that if this Court inclines to allow the petition, direct the petitioners in the respective petitions / accused to deposit a sum of Rs.15,000/-each before this Court for disbursing the same to the petition mentioned witness P.W.1.

13. This Court has given its anxious consideration on the rival contentions of both the parties. The Petitioner in M.P.No.13/2025 is arrayed as A-5, the petitioners in M.P.No.14/2025 are arrayed as A-1, A-3 and A-6 and the petitioners in M.P.No.15/2025 are arrayed as A-2 and A-4 in S.C.No.195/2017, which is pending before this Court. The Petitioners in the respective petitions / Accused have been charged for the offences u/s.120(B), 147, 148, 302 r/w 149 and 34 of IPC and Sections 15(1)(a)(i), 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 r/w Section 153(A) of IPC. As of now, in this case, the prosecution has examined 5 witnesses as P.W.1 to P.W.5 and 9 documents have been marked as Ext.P-1 to Ext.P-9 and six material objects have been marked as

P.M.O.1 to P.M.O.6. At this stage, the petitioners in the respective petitions / accused filed these three petitions to re-open the case and to recall the prosecution witness P.W.1 for the purpose of further cross examination.

14. On perusal of case records, it appears that on 24-09-2024, P.W.1 was examined and four documents and two material objects have been marked. Further P.W.1 was cross examined by the defence counsel and thereafter, four prosecution witnesses have been examined as P.W.2 to P.W.5. Now, it is the contention of the petitioners in the respective petitions that, during the time of cross examination, very vital and crucial aspect of the defence are omitted and hence, it is just and necessary to the petitioners in the respective petitions / accused to cross examine P.W.1 on those aspects and for the same, further cross examination of P.W.1 is very much necessary.

15. Whereas the learned Special Public Prosecutor would contend that, in the above case, P.W.1 was examined on 24-09-2024 and on the same day itself, P.W.1 was cross examined in full by the defence counsels and as of now, the case is posted for further PWs. Further during the time of trial, one of the witness namely Thiru.M.Nehrudass was threatened by the accused and father of A-1 and hence, a case in Crime No.558/2024 has been registered against them and under the said circumstance, repeated Court appearances gravely disrupt her livelihood and impose undue hardship.

16. Though there is a great force in the contention of the learned Special Public Prosecutor, however, no party in a trial can be foreclosed from correcting, errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.

17. In the case between **Zahira Habibullah Sheikh & Anr Vs State of Gujarat & Ors.** reported in 2006 AIR (SC) 1367, it has been held in the following paragraphs that;

25. In this context, reference may be made to Section 311 of the Code which reads as follows:

"311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, 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, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be

essential to the just decision of the case."

The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequences, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is

the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

26. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the

necessity for application of judicial mind.

27. As indicated above, the Section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation: it is, that the Court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court. Sections 60, 64 and 91 of the Indian Evidence Act, 1872 (in short, 'Evidence Act') are based on this rule. The Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the Court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The Court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the Court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the Court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the

facts of each case, and has to be determined by the Presiding Judge.

28. The object of the Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by Court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a Court arises not under the provision of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the Court could not be termed a witness of any particular party, the Court should give the right of cross-examination to the complainant. These aspects were highlighted in Jagat Rai v. State of Maharashtra, (AIR 1968 SC 178).

29. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the

public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

18. Hence, in view of the dictum laid by the Hon'ble Apex Court as stated above, though the petitioner / accused has filed this application in the stage of further PWs, however, considering the nature and circumstances of the case and based on the judgments cited supra and with a view to adhere the principles of nature justice fully and with a view to give opportunity to the petitioners in the respective petitions / accused to put forth their defence, with a view to ensure fair trial, and in the interest of justice, this Court does incline to allow the petitions with a condition to pay a total sum of Rs.12,000/- to P.W.1.

In the result, three petitions are allowed with the following conditions:-

- (a) The petitioners in the respective petitions / accused are directed to pay a sum of **Rs.2,000/- each** [Two Thousand each] i.e., a total sum of **Rs.12,000/-** [Twelve Thousand only] directly to P.W.1 on the date of her appearance.
- (b) The petitioners in the respective petitions / accused shall cross examine P.W.1 on the very same day of her appearance and in the event of the petitioners

in the respective petitions / accused to cross examine P.W.1, the right of the petitioners in the respective petitions to cross examine P.W.1 shall be forfeited.

Typed to dictation directly to steno-typist, typed by her, corrected and pronounced by me, the common order in open Court, on this the 27th day of January, 2026.

PRINCIPAL DISTRICT & SESSIONS JUDGE,
COIMBATORE.

//True copy//

**Fair Common Order in
M.P.Nos.13/2025, 14/2025
and 15/2025 in
Spl.S.C.No.195/2017
Dated:27-01-2026.**