

IN THE COURT OF PRINCIPAL SESSIONS JUDGE, CHENNAI

**Present: Thiru.S.Karthikeyan, M.A., M.L., M.Sc., P.G.D.C.F.Sc., P.G.D.D.F.,
Principal Sessions Judge.**

Friday, the 3rd day of July, 2026.

CrI.M.P.No.7/2026

against

S.C.No.50/2025

State, rep. by its
Inspector of Police,
K-11, C.M.B.T. Police Station,
Chennai.

...Petitioner/Complainant

-Vs-

Venkatesan

...Respondent/Accused

This petition coming on this day for final hearing in the presence of City Public Prosecutor for the petitioner and of M/s.D.Padmanabhan and M.Murali Ragul, the counsel for the respondent and upon hearing both sides and upon perusing the case-records, this court delivered the following :-

ORDER

1. Petition to recall PW7 for the purpose of further examination.
2. The prosecution has come up with the present application seeking for recall of PW7 for the purpose of further examination on the prosecution side.
3. The petitioner / State in their petition submitted as below:

The petitioner is the present Inspector and he is in charge of this case and I am well acquainted with the facts of this case. On 17-7-2025, PW-7 Mr. Saravanan was examined before this hon'ble court. He had visited the scene of crime and had prepared observation Magazar and Rough Sketch as to the scene of crime and also had done some

preliminary investigation in this case. At the time of examining Mr. Saravanan due to oversight he had not deposed his part of investigation and had not marked certain relevant documents which are prepared and collected by him in the investigation. Those documents are necessary to be marked to prove the case of the prosecution otherwise irreparable loss and hardship will be caused to the prosecution if the documents are not marked as exhibits in this case by the prosecution. The copy of the documents which are to be marked as prosecution exhibits are already furnished to the accused and by allowing this application the accused will not be subject to any hardship, since, they have an opportunity to cross examine the witness Mr. Saravanan, Sub-Inspector of Police. K-11, C.M.B.T. Police station, Chennai. Great prejudice will be caused to the prosecution if this application is not allowed. No prejudice will be caused to the accused in this court allowing this application. In the circumstances and in the interest of justice it is humbly prayed this hon'ble court may be pleased to recall the Prosecution Witness Mr. Saravanan, Sub-Inspector of Police, permit him to further examine him before this hon'ble court and permit the prosecution to mark the relevant documents as Prosecution Exhibits in S.C. No. 50 of 2025 or pass such or other order which is deemed fit and proper and thus render justice.

4. The respondent / accused in his counter submitted as below :

The petitioner is the respondent / accused in the above Criminal Miscellaneous Petition and he is well acquainted with the facts of the case. The petitioner deny each and every allegation, averment and contention made in the petition except those that are

specifically admitted herein. The present petition filed by the prosecution seeking to recall PW-8 and mark additional documents is not maintainable either in law or on facts and is liable to be dismissed in limine. PW-8 was already examined in chief and cross-examined in full. After completion of his evidence, the prosecution did not raise any objection or seek permission to mark any further documents at the relevant time. The reasons now stated by the prosecution that due to "oversight" certain documents were not marked clearly establish gross negligence and lack of due diligence on the part of the investigating agency, and such lapses cannot be cured at the cost of the accused. Sec.311 Cr.P.C. can be recalled only if the prosecution introducing any new document in addition can be permissible, whereas here the sketch is one of the vital part of the charge sheet and it is reported in (2013) 14 SCC 461 (Rajaram Prasad Yadav Vs. State of Bihar and Another), the Hon'ble Supreme Court has considered the judgment on the aspect of recall of witnesses under Section 311 Cr.P.C., and Section 139 of Indian Evidence Act. Announced the following 14 principles when dealing with an application under Section 311 Cr.P.C. They are:

"17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C., read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

17.1. Whether the court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case?

17.2. The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

17.8. The object of Section 311 Cr.P.C. simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. The court arrives at the conclusion that additional evidence is necessary, not

because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that 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.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13. The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14. The power under Section 311 Cr.P.C. must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same

must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

5. The prosecution is attempting to fill up lacunae in its case, which is impermissible in law. The Hon'ble Supreme Court and various High Courts have repeatedly held that recall of witnesses should not be allowed to enable the prosecution to strengthen a weak case or to patch up defects. The documents now sought to be marked were admittedly available with the prosecution from the very beginning of the trial, and therefore the plea of inadvertence or oversight is neither bona fide nor acceptable. It is false to state that no prejudice will be caused to the accused. Allowing the petition at this stage would seriously prejudice the defence, as the accused has already disclosed his line of defence during cross-examination based on the evidence as it stood then. The prosecution's contention that copies of documents were already furnished is denied. Mere supply of documents does not confer an automatic right to mark them at any stage of the trial without following due process of law. The present petition has been filed only to delay the proceedings after realizing that the prosecution evidence already recorded is insufficient to prove the alleged charges against the accused. The balance of convenience lies entirely in favour of the accused, and on the other hand, allowing the petition would amount to miscarriage of justice and abuse of the process of this Hon'ble Court. The respondent undertake to face the trial

expeditiously and further submit that repeated recall of witnesses on flimsy grounds defeats the very object of a fair and speedy trial.

6. Petition, affidavit, and counter affidavit are perused and considered. Both sides heard.

7. Point for consideration: Whether PW7 is to be recalled for further examination on the side of the prosecution side or not?

ANSWER:

8. This court has given its thoughtful to consideration to the rival submissions put forth on either side. The prosecution has come up with the present application seeking for recall of PW1 for the purpose of further examination on prosecution side. According to the learned City Public Prosecutor, on 17/7/2025, PW7 Mr. Saravanan was examined PW7 has done initial investigation in this case. However, due to oversight, it was not elicited from him with regard to initial investigation conducted by him. He visited the place of occurrence and prepared observation mahazar and rough sketch which need to be marked in this case to substantiate the case of the prosecution. Copy of the documents were already furnished to the accused and they have opportunity to cross-examine the witness. Hence, the learned Assistant Public Prosecutor prays for allowing this application.

9. Per contra, the learned counsel for the defence contended that the witness was already examined in chief and cross-examined in full. Now that the prosecution has claimed that due to oversight certain documents were not marked through this witness, it

established gross negligence on the part of the investigation agency and therefore, to fill up that lacuna section 311 CrPC cannot be invoked. The learned counsel for the defence relied on the decision of the Honorable Apex Court in Rajaram Prasad Yadav vs State of Bihar and another to say that the Apex Court has given 14 principles to be observed while dealing with an application under Section 311 Cr.P.C. They are :

"17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C., read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

17.1. Whether the court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case?

17.2. The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

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17.4. The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a

prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

17.8. The object of Section 311 Cr.P.C. simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. The court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that 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.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of

the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13. The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14. The power under Section 311 Cr.P.C. must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

10. According to the learned counsel for the defence, the prosecution is attempting to fill up the lacuna which is impermissible in law. Therefore, the learned counsel for the defence prays for dismissal of the prosecution.

11. On perusal of record, it is found that LW15 was examined as PW7 on 17.7.2025 and Exhibit P3 was marked through him. From the submission of the learned City Public Prosecutor, it is found that PW7 has also conducted initial investigation and

he visited the place of occurrence and prepared observation mahazar and rough sketch. The said documents are relevant under Section 7 of the Indian Evidence Act to establish the state of things at the scene scene of crime. Though the learned counsel for the defence contended that the prosecution has omitted to mark the said documents due to oversight, which is a gross negligence and and the prosecution cannot be permitted to fill up the lacuna in its case by resorting to Section 311 CrPC, this court is of the considered view that the lacuna in the case of prosecution is nothing but an inherent defect in the case of the prosecution. Mere an omission to mark certain documents which were already on record and filed along with the final report, cannot be termed as lacuna in the case of the prosecution. Reliance is placed upon decision of the honorable Apex Court in Rajendra Prasad versus Narcotics Cell, reported in 1999 (6) SCC 110, wherein the honorable Apex Court held as below:

"It is a common experience in criminal courts that defense counsel would raise objections whenever court exercises powers under section 311 of the Code by saying that the court could not fill the lacuna in the prosecution case. A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage to err is human."

Therefore, the contention of the learned counsel for the defence, that the prosecution cannot be permitted to fill up lacuna is not true in this case. As submitted by the learned CPP, no prejudice will be caused to the accused, since the accused was already furnished with the copies of those documents, and the accused had an opportunity of cross-examination of witness with regard to the documents to be marked. Therefore, this court

is inclined to recall PW7. Accordingly, this petition is allowed.

Dictated to the Stenographer, transcribed by him, corrected and pronounced by me in the open Court this the 3rd day of July, 2026.

ss

PRINCIPAL SESSIONS JUDGE