

IN THE II ADDITIONAL CITY CIVIL COURT AT CHENNAI

Present: Tmt.Dr.R.Sathya., M.L. Ph.D.,

I Additional Judge

(FAC) II Additional City Civil Court, Chennai

Friday the 10th day of July 2026

CrI.M.P.No.9371 of 2025

in

C.A.No. 128 of 2024

against

C.C.No. 11213 of 2007

CNR.NO. TNCH01-001028-2024

N.Anantha Krishnan, S/o. Natesan

.....Petitioner/Appellant/Accused

Vs.

State Rep by its
The Sub Inspector of Police
Bank Fraud Wing,
Central Crime Branch,
Vepery, Chennai-600 007.

....Respondent/Respondent/Complainant

This petition having come up on 07.07.2026 for hearing before me in the presence of M/s. G.Ashok Kumar, P.Parthipan, A.L.Nagarajan and M.Maria Joseph Vincent, Counsels for the petitioner/appellant/accused and Mr.D.Balasubramaniam, Additional CPP appearing for the Respondent/Complainant and upon hearing the arguments from both sides and upon perusing the petitions and other connected records and having stood over for consideration till this day, this court pronounced the following:

ORDER

This petition has been filed by the Petitioner/accused to recall the prosecution witnesses viz., PW1, PW4, PW5 and PW6 for the purpose of cross examination under section 311 Crpc.

2. The averments in the affidavit filed in support of the petition in short is as follows:

The petitioner is the appellant in the above criminal appeal and accused in the C.C. The appellant stated that he is facing charges under section 419, 420 of IPC in C.C.No. 11213/2007 and he was convicted to undergo 2 years rigorous imprisonment and imposed fine amount each Rs.1000 in both sections. At the time of trial the appellant/accused had failed to cross examine the complainant PW1 (Mohandoss), Owner of the Browsing Centre, PW4 (Venkatesh) and his wife PW5 (Menka), Investing Officer PW6(Mary Raji) to prove his case beyond the reasonable doubt. It is further submitted that the trial court blindly believed the statement and deposition given by the witnesses and failed to derive the conclusion that no one can make a transaction in the credit card by using its Xerox copy/Credit Card number without proper authentication. It is very important and vital to cross examine the complainant PW1 (Mohandoss), Owner of the Browsing Centre, PW4 (Venkatesh) and his wife PW5 (Menka), Investing Officer PW6(Mary Raji) to prove his non involvement in the alleged offence. Unless the witness is cross examined the petitioner will be put to irreparable loss and mental agony. Hence this petition.

3.The counter filed by the prosecution in short is as follows;

The respondent is the complainant/State. It is submitted that after the chief examination of the witnesses PW1, PW4, PW5 and PW6 they were properly cross examined and the petitioner/appellant had been subsequently convicted and sentenced to undergo 2 years rigorous imprisonment and imposed fine of Rs.1000/- each in the both sections i.e., 419 and 420 of IPC. The above petition has been filed with an ulterior motive to drag on this case unnecessarily. It is not necessary and required to recall the above witnesses for further cross examination. The Hon'ble Trial Court has passed the above judgment in accordance with law. The petition is liable to be dismissed.

4.Point for consideration:

1.Whether PW1, PW4, PW5 and PW6 is to be recalled or not?

5.Point:

Heard the petitioners counsel and the arguments of the Additional CPP . The petition has been filed by the petitioner/Accused to recall PW1, PW4, PW5 and PW6 for the purpose of further cross examination of the witnesses. On perusal of records it reveals that the prosecution had examined PW1 to PW6 and had marked Ex.P1 to Ex.P12. The petitioner/accused had through his counsel before the trial court had cross examined PW1 on the same day when the witnesses were examined in chief. Further PW4 and PW5 had not been cross examined stating that there was no cross

on the side of the defense but subsequently on 10.08.2023 nearly after an year PW4 and PW5 had been recalled and cross examined by the defense. Similarly PW6 had not been cross examined stating that there was no cross on the side of the defense and subsequently on 07.09.2023 nearly after seven months PW6 had been recalled and cross examined by the defense. The present petition has been filed under 311 Cr.P.C. stating that the petitioner/accused counsel had failed to cross examine the witnesses. It is pertinent to mention 311 Cr.P.C. which reads as follows:-

“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.”

As per Section 311 Cr.P.C. it empowers the trial court to summon or recall witnesses if their evidence appears essential for the just decision of the case. The petitioner/accused had not shown any proper reason as to why the further cross examination of PW1, PW4, PW5 and PW6 is necessary and has also not stated as to why he could not effectively conduct the trial before the trial court and why it is essential for the decision of the present appeal.

The power under Section 311 Cr.P.C. must 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. A reading of Section 311 Cr.P.C. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr.P.C. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution. Keeping

the above principles in mind, when this court examines the case on hand, the criminal case as against the petitioner/accused has been lodged as early as 05.08.2007 and the charge sheet having been filed subsequently the proceedings before the trial court had commenced as early as 20.03.2008 and completed only on 09.11.2023 (i.e.,) nearly after 15 years. Having filed the appeal on 16.02.2024, the present petition has been filed on 12.09.2025 and the reasons stated by the petitioner/accused is not satisfactory and mere dissatisfaction with the earlier cross examination is only to fill the gaps in the defense and the same cannot be entertained. Further this court is of the considered view that there is no bonafides in the application filed by the petitioner/appellant. The trial proceedings having been pending before the trial court for nearly 16 years the petitioner/appellant having kept silent all these years had come up with the petition at the stage of appeal arguments.

In the result this petition is dismissed.

Dictated directly to the Steno typist computerized by her and after my corrections, pronounced by me in the open Court, this the 10th day of July 2026.

sd/- Dr.R.Sathya

I Additional Sessions Judge,
(FAC) II Additional Sessions Court, Chennai.

Petitioner side witness and exhibits:-Nil

Respondents' side witness and exhibits:-Nil

sd/- Dr.R.Sathya

I Additional Sessions Judge,
(FAC) II Additional Sessions Court, Chennai.

Draft/Fair order
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Dated: 10.07.2026
II Additional Sessions Court