

**IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS
JUDGE, DINDIGUL**

PRESENT : Thiru. Swarnam J. Rajagopal, B.A.B.L., (Hons.)

Additional District and Sessions Judge, Dindigul.

Saturday, this the 6th day of June 2026

Crl.M.P. No.964/2026

in

S.C.No. 73/2025

1. Sarthar, S/o.Heeralal, Maraignana Nagar, Kudai Parupatti,
Dindigul
 2. Muthuvel, S/o.Nagasamy, Muniyappan Kovil Street,
R.V.Nagar, Dindigul
- ...Petitioners/ Accused No.4 & 5
- Vs-

The State, Rep by Inspector of Police,

Dindigul Town Police Station,

Cr.No.166/2023

U/s.399 and 402 of I.P.S.

... Respondent/Complainant

This petition came up for final hearing on 03.06.2026 before me in the presence of Thiru. D.V.Prakaash, and Thiru.J.Rajasekaran, Advocates for Petitioners/ Accused No.4 & 5 and of Thiru.S.Soosai Robert, Additional Public Prosecutor for Respondent/Complainant. Upon hearing the submissions made on either side and upon perusal of the records available on file, this court passes the following:

ORDER

1. This petition has been filed by the petitioners/Accused Nos.4 and 5 under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking recall of PW1 to PW4 for the purpose of cross-examination.

2. The case of the petitioners in brief is as follows :-

The petitioners are Accused Nos.4 and 5 in S.C.No.73 of 2025 pending before this Court for the offences punishable under Sections 399 and 402 of the Indian Penal Code. On 06.03.2026, PW1 to PW4 were examined on the side of the prosecution. According to the petitioners, there was a change of counsel on their behalf on the said date and consequently PW1 to PW4 could not be cross-examined on behalf of Accused Nos.4 and 5. The omission was neither wilful nor deliberate, but occurred due to bona fide circumstances. The petitioners are prepared to bear the necessary batta and expenses for securing the presence of the witnesses. It is their contention that unless an opportunity is granted to cross-examine PW1 to PW4, serious prejudice would be caused to their defence. Hence, they seek recall of the said witnesses.

3. The respondent/prosecution has opposed the petition contending that the final report was filed on 18.08.2023 and, after committal proceedings in P.R.C.No.64 of 2023, the case is now pending as S.C.No.73 of 2025. On 06.03.2026, LW1, LW3, LW4 and LW5 were examined as PW1 to PW4. Though the learned counsel for Accused Nos.4 and 5 was present before the Court on the said date, no cross-examination was conducted on their behalf, whereas the other accused had cross-examined the witnesses. According to the prosecution, the present petition has been filed only to protract the proceedings.

It is further contended that the witnesses sought to be recalled are police officials in Government service and their recall would cause inconvenience to their official duties and delay the progress of the trial. Hence, the petition is liable to be dismissed.

4. The point for consideration is:

Whether the petition is liable to be allowed?

5. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent. Perused the records.

6. POINT:

Section 348 of the Bharatiya Nagarik Suraksha Sanhita confers wide powers upon the Court to summon, recall or re-examine any witness at any stage of the proceedings if such evidence appears to be essential for the just decision of the case. The paramount consideration is whether the exercise of such power would advance the cause of justice and facilitate a fair adjudication of the issues involved.

7. In the present case, PW1 to PW4 have already been examined on the side of the prosecution. It is not in dispute that these witnesses have not been cross-examined on behalf of Accused Nos.4 and 5. The right of cross-examination is a valuable right available to an accused and forms an important

component of a fair trial. Any adjudication on the basis of testimony which has not been subjected to cross-examination by the concerned accused may result in prejudice to their defence.

8. Though the prosecution has contended that the petitioners had sufficient opportunity on the earlier occasion and that the petition has been filed only to delay the proceedings, this Court is of the view that the petitioners should not be non-suited merely on account of the lapse attributed to the change of counsel, particularly when the evidence sought to be tested through cross-examination relates to material prosecution witnesses.

9. At the same time, the inconvenience caused to the witnesses and the delay occasioned in the progress of the trial cannot be ignored. The witnesses sought to be recalled are Government servants and their presence before the Court would entail expenditure of public time and resources. Therefore, while granting an opportunity to the petitioners in the interest of justice, appropriate costs are required to be imposed.

10. Considering the nature of the case, the stage of the trial and the necessity of affording a fair opportunity to Accused Nos.4 and 5 to cross-examine the prosecution witnesses, this Court is of the considered view that one final opportunity may be granted to the petitioners, subject to payment of costs. Accordingly, the point is answered in favour of the petitioners.

11. **In the result**, this petition is allowed subject to the condition that the petitioners/Accused Nos.4 and 5 shall pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the credit of the State Government of Tamil Nadu in treasury towards the expenses for securing the presence of PW1 to PW4, within one week from the date of this order. On such payment, PW1 to PW4 shall be recalled and the petitioners/Accused Nos.4 and 5 shall cross-examine them on the date fixed by this Court without seeking any further adjournment. Failing such payment within the stipulated time, this petition shall stand dismissed automatically without further reference to this Court.

The other accused, if so advised, shall also complete their cross-examination of PW1 to PW4 on the same day.

Dictated to the stenographer, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 06th day of June 2026.

**Additional Sessions Judge,
Dindigul**