

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE AT ERODE

**Present: Tmt.K.Krishna Priya, M.L.,
Chief Judicial Magistrate, Erode.**

Dated this the 26th day of November 2025, Wednesday

**MP. No. 16 of 2025
in
CC No. 374 of 2022**

State represented by
Inspector of Police,
Ammapettai Police Station,
Erode.

.. Petitioner/Complainant

/Vs./

1. Chinnappagounder
2. Pachamuthu
3. Angamuthu @ Thangarasu
4. Semalaigounder

.. Respondents/Accused

This petition came up for final hearing on 21.11.2025 before me in the presence of Additional Public Prosecutor Thiru.N.Ramesh Babu, appearing for the Petitioner/Complainant and Thiru.V.Ramakrishnan, Advocate appearing for the Respondent/Accused and upon perusing the relevant records and upon hearing both side arguments this court deliver the following :

ORDER

This petition is filed by the petitioner u/s. 311 of Cr.P.C.

Heard both sides.

1. The prosecution has filed the present petition under Section 311 CrPC seeking permission to examine the present Inspector of Police, Ammapettai Police Station, as an additional witness in the place of LW8, Sub-Inspector Mr. Velliangiri, who was the Investigating Officer and who has since passed away. It is stated that LW8 was ordered to be examined on 22.05.2025; however, it has now been verified that he passed away on 27.01.2016. It is further stated that LW9, Inspector Valavan, has been wrongly shown in the charge sheet and the list of witnesses as the Investigating Officer though he had no role in the investigation. Therefore, the prosecution seeks permission to add and examine the present Inspector, Mrs. Kavitha, as a formal witness to speak to the police records of the deceased Investigating Officer.
2. The respondent/accused has filed a detailed objection disputing this request. It is contended that the present Inspector had no involvement in any stage of the investigation and that the records nowhere state that she assisted the Investigating Officer. It is argued that the first page of the charge sheet shows Inspector Valavan as the Investigating Officer, and he is also cited as LW9; hence, the prosecution cannot bypass LW9 and attempt to examine the present Inspector. It is further argued that, as interpreted by the Honourable Supreme Court in *Rajaram Prasad Yadav v. State of Bihar*, *Jamatraj Kewalji Govani v. State of Maharashtra*, and *Mohanlal Shamji Soni v. Union of India*, the first part of Section 311 is discretionary, permitting examination of a witness who is present, and the second part mandates examination only when the witness is essential for deciding the case. Initially the respondent contended that, the present Inspector's evidence is not essential and the prosecution must first examine LW9, and therefore, the petition is liable to be dismissed. But during the arguments, and in the written arguments filed by the respondents it is submitted in page 10, para B and C that examining LW9 is unnecessary because he is not involved in the investigation, and the investigation was

illegally conducted by LW8 without having powers to investigate a cognizable offence.

3. The respondent further in the written arguments submitted that the power under Section 311 must be exercised sparingly, with caution, and only when the proposed evidence is germane to the issue involved, when the opposite party is given fair opportunity to rebut, and when the power is invoked solely to meet the ends of justice. It is contended that permitting a successor officer who had no role in the investigation would violate these principles.
4. Heard both sides. The written arguments have also been considered.
5. Before dealing with the legal question, certain crucial admitted facts must be placed on record:
 - a) It is an admitted position, including in the written arguments and the stay petition filed by the respondents themselves that the entire investigation was conducted only by LW8, Sub-Inspector Velliangiri.
 - b) All investigation papers including the mahazar, rough sketch, Section 161 statements, and final report bear only the signature of LW8.
 - c) LW9, Inspector Valavan, played no role in the investigation, and his inclusion as an Investigating Officer in the final report is admittedly erroneous.
 - d) By a separate order passed today in the connected petition, this Court has already held that there is no necessity to examine LW9.
 - e) LW8 died on 27.01.2016 and therefore cannot be examined.

6. Thus, the situation is that the only Investigating Officer has died; the only other officer shown as IO (LW9) is admittedly included by mistake; and the investigation papers can be proved only through the present lawful custodian of records.
7. The question therefore is whether, upon the death of the Investigating Officer, the prosecution may prove the investigation papers through the present Inspector, who is the competent successor custodian of records of the same police station.
8. When the Investigating Officer cannot be examined due to death, the prosecution has no way other than to examine the successor officer to prove official acts, entries, and signatures appearing on police records. The successor of course cannot speak to matters of personal knowledge, but may identify and prove the authenticity and continuity of the official records. Such examination does not substitute the Investigating Officer but only permits formal proof of documents to prevent failure of justice.
9. The written arguments of the respondent citing Rajaram Prasad Yadav do not prohibit examination of the successor when the Investigation Officer is dead. There is no dispute that Section 311 must be exercised with caution. The present case satisfies that standard because, the evidence sought is germane, since without formal proof of the investigation papers, the record cannot be introduced at all. The purpose is to ensure a fair trial and not to fill any lacuna. And denying this petition would amount to denying fair opportunity to the prosecution, and that would actually cause injustice by rendering relevant records incapable of being proved. The respondent will have full opportunity to cross-examine the witness. The necessity arises from the death of the Investigating Officer.

10. In view of the admitted factual position, the written arguments of the respondent, this Court finds that the objection of the respondent is without merit. The present Inspector, as the lawful successor custodian of the records is the only competent officer now available to formally identify and speak to the official records. Her examination is necessary to avoid failure of justice and to complete the evidentiary process in accordance with law.

Accordingly, this petition is allowed. The present Inspector of Police, Ammapettai Police Station, is permitted to be examined as an additional formal witness under Section 311 Cr.P.C.

// Dictated to the Steno typist, directly typed by her in the computer, checked, corrected and pronounced by me in open Court, on this 26th day of November 2025.//

**Chief Judicial Magistrate,
Erode.**