

**In the Court of Principal Sessions Judge, Kanniyakumari District at
Nagercoil.**

Present : Thiru B. Karthikeyan, B.L.,
Principal Sessions Judge.

Wednesday, the 22nd day of January, 2025.

Miscellaneous Petition No.1/2024

in S.C. No.79/2024

State of Tamil Nadu,
Through Inspector of Police,
Boothapandy Police Station,
Rep. by the Public Prosecutor, Nagercoil. ...Petitioner/Complainant

/Vs./

Richard @ Richer ... Respondent/Accused

This petition coming on this day for final hearing before me in the
presence of

Thiru P. Linus Raj - Public Prosecutor for the petitioner

Thiru B. Ezhavarasu - Advocate for the respondent

and upon hearing both side and upon perusing the materials available on record
, this court delivered the following:

ORDER

This petition has been filed, seeking recall of PW13 u/s 348 of
BNSS, by the prosecution stating that after the commission of the offence, the

accused went to the police station with blood stained dress on 21.08.2023 at about 22.00 hours to 22.12 hours and gave a voluntary statement to the police. The arrival of the accused was recorded in CCTV camera available in the police station. During investigation, PW13 had examined one Arun Kumar who was working as technician in the company namely Sacred Heart Solution at Mulagumoodu in Kanyakumari District, who is maintaining CCTV camera of all police station in Kanyakumari District. The Inspector of Police, Boothapandy approached PW13 to download the CCTV footage between 22.00 hours to 22.12 hours on 21.08.2023. The said Arun Kumar copied the CCTV footage in pen drive and recorded the same in two Compact Discs and handed over the same to the Investigation Officer of which, he produced one Compact Disc in the court and kept another Compact Disc in the CD file. When the Investigation Officer produced one of the Compact Disc before the court along with docket sheet, he punched the Compact Disc along with docket sheet and the Compact Disc got damaged. Claiming thus, he would further state that when PW13 was examined in the court, the Compact Disc could not be played before the court and therefore, he could not adduce any evidence on seeing the content of the Compact Disc. However, the Compact Disc as available in the CD file and is to be produced before this court. Stating thus, it would be contended by the prosecution that PW13 requires to be recalled for producing the Compact Disc along with memo for marking the compact disc.

2. Counter statement filed by the respondent/accused, wherein it would be pointed out that PW13 Arun Kumar is not a competent person to adduce evidence in respect of the Compact Disc. Similarly, in the statement u/s 161 (3) Cr.P.C., the PW13 Arun Kumar or in the evidence of PW13 before this court, he had not spoken about the two Compact Discs being recorded through pen drive, upon which two Compact Discs were sent to the Investigation Officer. It is a new version that is made by the prosecution in the recall petition. Moreover, PW13 has already admitted that he is not the competent authority to issue a certificate u/s 65B of Indian Evidence Act. According to him, this petition is only filed for filling up the lacuna.

3. Heard both. Perused the materials on record.

4. **Point for consideration that arises is:**

(i) Whether the present petition deserves to be allowed?

5. **Point No.(i):**

According to the prosecution, CCTV cameras in the police station are being maintained by the company namely “Sacred Heart Solution” at Mulagumoodu, in which PW13 was employed and it was he who downloaded CCTV footage and produced two copies to the Investigation Officer. Whether such a claim is believable and whether a CD produced at this stage can be

relied upon are questions that has to be answered during or after trial. The present petition is only to recall PW13. Once he comes and adduces evidence, it would be open to the respondent/accused question the relevancy and evidentiary value of the 2nd Compact Disc. As such, the present petition deserves to be allowed.

6. In the result, this petition is allowed.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open court this the 22nd day of January, 2025.

Sd/-
Principal Sessions Judge,
Kanniyakumari at Nagercoil

Principal Sessions Court,
Nagercoil.
Fair Order in
M.P.No.1/2024
in SC No.79/2024
Dt.: 22.01.2025