

In the court of the Communal Clash Cases, Madurai
Present:**D.Jeyakumari Jemi Rathna, B.Com., B.L.,**
District and Sessions Judge
Communal Clash Cases Court, Madurai
Dated this the 9th Day of March 2026, Monday
CrI.M.P.No.742/2026
in
C.C.No.300/2017

...

Eashwaran (A1) (60/26),
S/o.Ponnuchamy,
Door No.49/W-1,
Indra Colony, Kulappa Goundenpatti,
Uthamapalayam Taluk, Theni District.

2.Jeevan (A2) (36/26),
S/o.Muthuveerappan,
No.340, Ward No.2, Pavundu street,
Kulappa Goundenpatti,
Uthamapalayam Taluk, Theni District.

...Petitioner/Accused

- /Versus/-

The State through the Inspector of Police,
Guddalore South Police Station,
Crime No.65/2017.

...Respondent/Complainant

This petition filed u/s 348 Bnss is coming on this 4th Day of March 2026 before this Court in the presence of Thiru.P.S.Senthilkumar, Advocate for the petitioner and Thiru.R.Ramasubramanian, Special Public Prosecutor for the State and having stood over for consideration this Court delivered the following:-

ORDERS

Petition averments in nutshell:

The petitioner/ Accused charged U/s 8(b)r/w 20(b)(ii)(B) NDPS Act. The case stands posted for questioning u/s 313 crpc.

Pw1 was examined on 03.09.2025, Pw2 and Pw3 were examined on 04.02.2026. Unfortunately the petitioners could not able to cross examine due to petitioners do not engage counsel on their side.

The cross examination of the above witness are very essential to determine the case due to Pw1, Pw2 and Pw3 deposed about search and seizure and arrest and laid charge sheet.

If this petition is not allowed, the petitioners will be put to irreparable loss and heavy hardship.

Counter of prosecution in nutshell:

The petitioner / Accused has been charged u/s 8(b) r/w 20(b) (ii)(B) NDPS Act. The petitioners / Accused has filed the above petition to recall the prosecution witness Pw2, Pw3 for the purpose of cross examination.

The above case was posted for trial and pending over a long period of time and the prosecution witness Pw2, Pw3 deposed their evidence already on 03.09.2025 and 04.02.2026.

The reason stated by the petitioner / accused is unreasonable and not sustainable. This petitioners / Accused did not take any effort to cross examine for a long time. In such circumstances, the filing of the petition to recall is just merely to drag on the trial. The apex court in various Judgments and in its recent judgment in Mukesh Singh Vs. State of Uttar pradesh had cited that, the Mandate of law itself states that examination in chief followed by cross examination must be recorded on the same day or the day after. In other words, there should be no reason for adjournment in recording the prosecution witnesses examination in Chief / Cross examination, as the case may be.

The prosecution witnesses in this case are police officials and if the petition is allowed, they will be subjected to hardships in performing their duties.

Therefore prayed to dismiss the petition in limine.

Heard the petitioner and Respondent.

Petition, counter and material records were carefully perused.

Point for consideration:

Whether this petition is to be allowed?

The contention of the Petitioner is that on behalf of prosecution, three witnesses, Pw1, Pw2 and Pw3 were examined. As, the petitioners did not engage counsel, those witnesses Pw1, Pw2 and Pw3 were not cross examined. Those witnesses have deposed about search, seizure, arrest and laying of charge sheet. Hence cross examination of the above witnesses are very essential to determine the case. Hence in order to cross examine those witnesses, this petition is to be allowed.

The contention of the respondent / prosecution is that, the petitioners / Accused did not take any effort to cross examine for a long time. In such circumstances, the filing of the above petition to recall is just merely to drag on the trial. The Hon'ble Apex court in its recent Judgment in Mukesh Singh Vs. State of Uttar Pradesh has cited that "the mandate of law itself states that examination in chief followed by cross examination must be recorded on the same day or the day after. In other words there should be no reason for adjournment in recording the prosecution witnesses examination in Chief / Cross examination as the case may be".

After 5 months only to drag on the case, this petition has been filed.

Hence this petition has to be dismissed.

On perusal of material records it seems that this petition has been filed belatedly after 5 months as pointed out by prosecution.

But reason stated for filing of this petition is, the prosecution witness have deposed about search, seizure arrest and laying of charge sheet. Hence cross examination of those witnesses are very essential to determine the case and this petition has been filed. Also it has been stated that counsel not engaged by the petitioners.

If the petitioner do not have means for engaging counsel they ought to have exercised their right for legal aid.

Even then, for the ends of Justice, and inorder to give an opportunity, this court is inclined to allow the petition. But they have to compensate for the delay in terms of cost.

Therefore, the petitioners shall pay a cost of Rs. 5,000/- to District Legal services Authority on or before 13.03.2026.

Also the petition shall pay batta and day cost to each witnesses.

In the result, petition is ordered to be allowed on payment of cost on or before 13.03.2026 call on 16.03.2026.

Hand written by me and typed by Typist in computer and corrected and pronounced by me in open court, on this the 9th Day of March 2026

District and Sessions Judge,
Communal Clash Cases Court,
Madurai

