

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 05th day of May 2026, Tuesday

Crl.M.P.No.942/2026

in

C.C.No.240/2022

...

Babin,
S/o.Baskar,

...Petitioner/Accused

- /Versus/-

The State through the Inspector of Police,
Kottar Police Station,
Kanniyakumari District,
Crime No.873/2021

...Respondent/Complainant

This petition filed u/s 348 BNSS is coming on this 22nd Day of April 2026 before this Court in the presence of Mr.J.Jeya Aron Raja 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 is the accused. On 08.08.2025, Lw11 was examined as Pw3 and certain exhibits Ex.P7 to P12 were marked. At the time of Pw3's examination the accused has not engaged counsel for his defence. Consequently no effective cross examination could be conducted on his behalf. Accused has now engaged counsel for defence and certain vital and Material questions remain to be put to Pw3 which are

necessary for a fair and just adjudication of the case. Further cross examination of Pw3 is essential to elucidate the facts, test the veracity of his evidence and bring forth certain omission and contradictions which have a direct bearing on the defence. The present petition is filed bonafide without any intention to cause delay, but solely to enable the accused to effectively exercise his right to defence. Hence this petition to recall Pw3 for the purpose of cross examination on behalf of the accused.

Counter in nutshell:

The Petitioner has been charged u/s 8(c) r/w 20(b)(ii)(B)NDPS Act and case is pending trial. . The Petitioner has filed this petition to recall Pw3 for the purpose of cross examination.

This case was posted for trial and pending over a long period. Pw3 deposed their evidence already on 08.08.2025. The reason stated by the petitioner is unreasonable and not sustainable. Pw3 was examined on 08.08.2025, and this petitioner after sufficient opportunity to take cross examination furnishing the defence council did not take any effort to cross examine for a long time and in the petition filed by the defence council for recalling Pw3 for cross examination stated the reason. They have not being the council for the defence that time but the defence “ Suggestio falsi and suppressio veri”, the Material fact that they filed Memo of Appearance on 08.10.2024 and 12.08.2025, they filed vakalath on behalf of Petitioner / Accused.

In such circumstances the filing of the above petition to recall is just merely to drag on the trial. If this petition is allowed, the prosecution witnesses will be subjected to hardships in performing their duties. Therefore prayed to dismiss the petition.

Heard both.

Petition, counter and material records were carefully perused.

Point for consideration:

Whether this petition is to be allowed?

Admittedly, this is a petition filed to recall prosecution witness already examined. Reason stated by the petitioner for cross examining Pw3 is that the petitioner / accused did not engage his counsel for defence.

But the respondent / Prosecution has objected the petition stating that the reason is just to drag on the trial.

On perusal of daily adjudication, material records and the recorded deposition of Pw1, Pw2 and Pw3 it seems that Pw1 was examined in chief on 12.07.2023 and on 18.03.2023, the said witness was recalled cross examined by the defence counsel. Pw2 was examined in chief on 04.02.2025 and on the very same day Pw2 was cross examined by the defence counsel.

Therefore the contention that counsel was not engaged on the date when Pw3 was examined by prosecution is falsified and the petition averments are nothing but suppression of Material Facts.

When the petitioner has daringly filed petition by suppressing Material facts, it seems that he has approached this court with unclean hands.

When the petitioner has filed petition by suppressing Material facts, it is very clear that this petition has been filed with Malafide intention.

When a person approaches court with unclean hands and with Malafide intention to drag on the trial, he cannot get any remedy.

On the abovesaid circumstances, this court has come to the conclusion, that this petition is devoid of Merits and is liable to be dismissed.

In the result, Petition is dismissed.

Hand written by me and typed by Typist in computer and corrected and pronounced by me in open court, on this the 05th Day of May 2026

District and Sessions Judge,
Communal Clash Cases Court,
Madurai