

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 24th Day of March 2026, Tuesday

**Crl.M.P.No.878/2026**

**in**

**C.C.No.48/2018**

...

R.Mukkaiya,  
S/o.Rasuthevar,  
South Street, Pappampatti,  
Palani Taluk,  
Dindigul District.

...Petitioner/Solo Accused

- /Versus/-

The State through Inspector of Police,  
Palani Takuk Police Station,  
Dindigul District.  
CrimeNo.361/2017

...Respondent/Complainant

This petition filed u/s 348 BNSS is coming on this 24<sup>th</sup> Day of March 2026 before this Court in the presence of Thiru.NA.Manimaran, 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:

Accused is charged u/s 8(c) r/w 20(b)(ii)(B) NDPS Act. On 05.02.2026 Investigating officer was examined as Pw3 and Exhibits P6- P9 were

marked. Due to ill health of the counsel, cross examination of Pw3 could not be conducted on that day.

The cross examination of the above said witness is very essential to determine the case as certain important and vital questions regarding the investigation to be put to Pw.3. If the said witness is not recalled for cross examination, it would cause irreparable loss and heavy hardship and serious prejudice to the accused.

Therefore prayed to allow this petition and recall Pw3.

Counter in nutshell:

The Petitioner /Accused has filed the above petition to recall the prosecution witness Pw3 for the purpose of cross examination. The above case was posted for trial and pending over a long period of time and Pw3 deposed his evidence already on 05.02.2026. The reason stated by the petitioner / Accused is unreasonable and not sustainable. The petitioners did not take any effort to cross examine for a long time. On such circumstances, filing of the above petition to recall is merely to drag on the trial.

The Hon'ble Apex court in its recent judgment in Kaldeep Singh Vs. State of Uttar Pradesh has cited that the provision u/s 348 Bnss cannot be used to delay trial.

Therefore prayed to dismiss the petition the petition.

Rival contentions were carefully considered.

Petition, counter and material records were carefully perused.

Point for consideration:

Whether this petition is to be allowed?

Admittedly, this is a petition filed u/s 348 BNSS to recall prosecution witness who was already examined.

The contention of the petitioner is that the prosecution witnesses Pw3 was examined in chief. On that day as the petitioner's Senior counsel due to his ill health could not cross examine that witness. Hence this petition to recall Pw3.

On careful perusal of the petition, this court could not find any other valid reason for not cross examining that witness.

The reason stated is very vague and unreasonable. If senior counsel was not in a position to cross examine the witnesses or not able to attend a case, he ought to have made other arrangements. Without doing so at the fag end of the case that too at the verge of disposal, filing of this petition is just to drag on the case and nothing else. Filing of this petition is deemed to be a delaying tactic, lacking specific reasons for recall, and is attempting to fill gaps in the case.

Essentially, court can recall a witness even after the examination in chief and cross examination are complete, provided it aids in a just decision.

Recalling should be done sparingly for strong and valid reasons and not just to fill lacuna. Recalling a witness should not be for filling in gaps in the prosecution case. But to ensure the truth is revealed.

But here the petition did not whisper any of the above valid reasons.

On the above said circumstances, when the petition failed to show this court, as to how the calling of the said witness will help the court in reaching at a just

and fair conclusion. It is well settled Principle that this section should be used sparingly, Judiciously and capriciously.

Therefore this Court has comes to a 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 24<sup>th</sup> Day of March 2026.

District and Sessions Judge,  
Communal Clash Cases Court,  
Madurai