

IN THE COURT OF THE JUDICIAL MAGISTRATE, KOMARPALAYAM

**Present : Tmt.A.K.Padmapriya, B.Sc, M.L.,
Judicial Magistrate, Komarapalayam**

Wednesday, the 20th day of May 2026

MP.No.42/2026, 43/2026 in STC.No. 36/2023

Sakthivel
S/o. Nallagavunder

... Petitioner/Complainant

//vs//

Vasudevan
S/o.Periyasamy

... Respondent/Accused

Having heard this petition in the presence of **Thiru.S.Ayyapan** the learned counsel for the petitioner and **Thiru.D.Balamurugan**, the learned counsel for the respondent and on perusal of the records and having stood over for consideration of this application till date, this court on merit doth the following

COMMON ORDER

The petitioner had filed this application to reopen and recall DW1 for further cross examination.

GIST OF THE PETITION:

The Petitioner had filed complaint for dishonour of Cheque against the Respondent and is pending for arguments. On perused of the records, it seen that some important questions are left out to be asked to Dw1. The wife of the accused was examined DW2 and cross examined by the petitioner. The oral evidence of DW1 and DW2 are contrary to each other. On 22.01.2026, when DW2 was examined, she had stated that the wife of the complainant had lodged complaint at Arachalur Police Station at 23.02.2022 and based on the said complaint, FIR was registered and the FIR was marked as Ex.D.4. The Judgment copy in STC.No,125/2024 delivered by

the court of Judicial Magistrate, Elumathur was marked as Ex.D.5. Cross examination of DW1 must be done with regard to Ex.D.4 and Ex.D.5. Hence, It is necessary to DW1 for further cross examination. Hence, prayed to allowed the petition.

GIST OF THE COUNTER:

The petition filed by the petitioner seeking to reopen the case is not maintainable either in law or by facts. The petitioners has not mentioned any provision of law under which the present petition is filed. Such a vague and omnibus petitio is liable to be dismissed in limine. It is submitted that a petition for reopening must necessarily be filed under the releavant provision such as Section 311 Cr.p.c, now amended as Section 348 of BNSS 2023(For recalling/ reexamining witnesses) or other enabling provisions. In the absence of quoting the proper provision the petition is procedurally defective and liable ot be rejected. The Petitioner has not stated what evidence is sought to be reopened, nor explained. What material was left out, Why such evidence is essential for just decision of the case, How the proposed evidence is essential for just decision of the case. A mere bald statment seeking reopening without particulars is not sufficient in law. The case already progressed substantially, and the petition is filed at an belated stage only to protract the proceedings. The Petitioner is attempting to fill up lacunae in the case, Which is impermissible. The petitioner has not show any due diligence or Valid reason for not producing the alleged evidence earlier. Reopening cannot be granted as a matter of routine. Allowing such a vague petition would cause serious prejudice to the Respondent/Accused and defeat the principles of fair trial and speedy justice It is settled law that reopening/recall is discretionay and must be exercised sparingly. It cannot be used to fill omissions or patch up weak points. Proper provision and justification are mandatory. In the absence of statutory provision, specific grounds and bonafide reasons, the present petition is liable to be dismissed. Therefore, it is prayed that this Court may be pleased to dismiss the petition as not maintainable and devoid merits.

POINT FOR CONSIDERATION:

1. Whether the said application is to be allowed or not?

ANSWER TO THE POINT NO.1

The petitioner who is the complainant in the main case had filed application to examine to reopen and recall DW1 for further cross examination stating that some important questions are left out to be asked to DW1 with regard to EX.D.4 and EX.D.5 that are marked through DW1 and DW2. The objection raised by the respondent is that the petition is filed belatedly to fill up the lacunae. It is admitted fact that EX.D.4 and EX.D.5 are marked through DW2. On perusal of EX.D.5, it is seen that the accused was arrayed as accused in this case. Hence, the reason stated by the petitioner that some questions need to be asked to DW1 with regard to EX.D.1 and EX.D.2 is justifiable. Hence, this court considering the facts and circumstances of the case and in the interest of the justice and to provide sufficient opportunity to the petitioner to prove his case and to avoid multiplicity of proceeding, the said application is allowed.

IN THE RESULT:

1. The petition is allowed

Directly typed by me in the Computer and corrected by me and the order pronounced in the open court on the 20th day of May 2026.

/Sd/A.K.Padmapriya

**Judicial Magistrate,
Komarapalayam**