

IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE,
PERAMBALUR

Present: Thiru.V.Padmanabhan, M.A., M.L., D.H.,
Principal District and Sessions Judge.

Monday, this the 16th day of March, 2026

Cr.M.P.No.215/2026

in

S.C.No.25/2024

State represented by
the Inspector of Police,
V.Kalathur P.S.
Cr.No.67/2017.

.. Petitioner/Complainant

-Vs-

1. Kalyanasundaram, (A1),
S/o.Periyasamy Udaiyar.
2. Samidurai, (A2),
S/o.Periyasamy Udaiyar.
3. Samidurai, (A3),
S/o.Manikka Udaiyar.
4. Selladurai, (A4), (died).
5. Azhaguvel Sami, (A5),
S/o.Ponnusamy Udaiyar.

.. Respondents/Accused.

This petition coming on this day for final hearing before me in the presence of Thiru.P.Senthilnathan, the Public Prosecutor for the petitioner/ complainant and Thiruvargal.T.R.Baskar and B.Vishnukarthikayaaan, Advocates for the respondents/accused, upon perusing the case records and hearing the arguments of both sides, this Court made the following:

ORDER

This is a petition filed U/s.311 of Cr.P.C to recall the witness

Pw6/ Hariharan and Pw10/Vivek, the doctors, for the purpose of marking the documents.

2. Following are the averments narrated in the petition:-

In SC.No.25/2024, the prosecution witnesses PW1 to PW14 have been already examined and the case is now posted for questioning of the accused under Section 313 Cr.P.C. Among the witnesses, PW6 and PW10, who are doctors, have clearly deposed in their evidence regarding the injuries sustained by PW1. However, the CT scan and X-ray images taken for the PW1 when he was taking medical treatment have only now been obtained. These medical records are material evidence. Therefore, it is necessary that the said documents be marked through PW6 and PW10. If the same are not marked, it would cause serious prejudice and loss to the defacto complainant as well as to the prosecution. Hence, the petition may be allowed.

3. Following are the averments narrated in the counter:-

The petition filed U/s.311 Cr.P.C on behalf of the prosecution side is not maintainable. It is pertinent to note that the power conferred U/s.311 Cr.P.C. with the court is only limited. The word used in the section spells "May". Further, it is submitted that, PW6 was examined on 24.02.2025 and PW10 was examined on 05.03.2025, on that day itself they were cross examined by the defence side. So, after one year delay, the prosecution filed this recall petition to mark CT Scan and X-ray, as material objects. Since, the recall petition is filed belatedly without giving any reason it should be rejected in 'to to'. Moreover, the CT scan and X-ray were taken by the Radiologist and technician, and not by the doctors. They can only gave

the opinion and the wound certificate given by them already marked as Ex.P3. But the name of the Radiologist and X-ray technician were not cited as witnesses in the memo of evidence. The steps taken by the prosecution by filing the petition is only to protract the trial and to fill up the lacuna of the case which is against the criminal justice. Hence, the petition may be dismissed with cost.

4. Point for consideration is:-

Whether the petition is liable to be allowed for the reasons stated thereon?

5. On Point:-

The petitioner is the complainant in the main case. The investigation officer, after investigation, laid final report and the court took cognizance of the same U/s.147, 148, 294(b), 120(b) and 307 of IPC.

6. On appearance of the accused persons, after hearing both sides, charges were framed against them. During trial Pw1 to Pw14 were examined on the side of prosecution and when the case is posted for questioning of the accused persons U/s.313 Cr.P.C, the petitioner has filed this application for the relief as indicated above.

7. In the petition, it is specifically stated that the doctors namely Pw6 and PW10 were examined regarding the injuries sustained by PW1; the CT Scan and X-ray are now only received, which were taken when PW1 was taking treatment; they are vital documents and that marking of said documents, PW6 and PW10 may be recalled.

8. In the counter as well as during the course of arguments, the respondents contended that both PW6 and PW10 were examined one year back and after a long delay the petition is filed and the concerned technicians, alone who had taken CT scan and X-ray are the competent persons; that to fill up the lacuna, this petition is filed and that the petition may be dismissed.

9. Admittedly, during trial, the doctors namely PW6 and PW10 have testified that, they have given treatment to PW1 and also given opinion about the injuries sustained by him. More particularly, the PW10 has specifically stated that the PW1 sustained fracture injuries. In this circumstances, the argument put forth on the petitioner side that since, the said documents have now only received, the prosecution has failed to file the documents while the said witnesses were examined. In their statements recorded during investigation would reveal about the treatment given to the PW1. That be the case, the arguments of the respondents that the documents are newly introduced is not acceptable. In such circumstances, giving an opportunity to recall the witnesses PW6 and PW10 and to mark the documents are sustainable.

10. The learned counsel for the respondents contended that, the concerned technician is the competent person alone had taken the CT scan and X-ray. This argument is cannot be accepted. They could not offer any opinion and also speak about the nature of injuries sustained by the injured witness. The learned counsel appearing for the respondents by relying the judgment reported in **Mani Majumdar V. State of West Bengal and another, (2019**

CRI.L.J 173) case argued that this petition is not at all maintainable. In the said Judgment, the Hon'ble Calcutta High Court held that no sufficient explanation was given by the Public Prosecutor. Here, as already indicated, the reasons for recalling the doctors are quite natural and believable one. That be the case, the facts and circumstances of the judgment relied upon by the respondent is not at all applicable to the facts of the application.

11. The Hon'ble Apex Court in “ **Mir Mohammed Omar Vs. State of West Bengal (AIR 1989 Supreme Court 1785) and Rajaram Prasad Yadav Vs. State of Bihar and Another (2014(4) Supreme Court cases (Criminal) 256)**, cases have clearly held that, ‘if evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person’. The learned Public Prosecutor, in support of his submission relied on decision reported in **Mannan S.K, Others Vs. State of West Bengal** case argued, that even at this stage of arguments, recall petition may be filed. The principle laid down in the said case is applicable to the facts, circumstances and stage of this case.

It is relevant to refer Judgment of Hon'ble High Court delivered in **Jayaseelan and others Vs. The State Represented by, The Inspector of Plice, Uvari Police Station, Tirunelveli District. (2019-2-L.W. (CrI).423) case.** In this judgment scope of Sec.311 Cr.P.C. is discussed as follows:-

“ 13. The submission made by the learned counsel for the petitioner that this additional witness and the complaint that is sought to be marked through him, cannot be done by way of filing an application under Section 311 of Cr.P.C,

is not acceptable to this Court. It is true that the prosecution has to place all the materials and the list of all witnesses, which it seeks to rely upon, along with the final report. However, this does not mean that the prosecution cannot examine any additional witness or mark any new document, which comes to surface at a later point of time, by taking aid of Section 311 of Cr.P.C.

14. At this stage, it will be beneficial to rely upon the judgment of this Court in K.Ravichandran Vs. The Inspector of Poice, Thanjavur, reported in 2018-2-L.W. (Crl.) 944. The relevant portions of the judgment is extracted here under:-

“7.The learned Government Advocate (Crl.Side) would submit that Section 311 of Cr.P.C gives a very wide discretion to the Court to allow a petition to recall and re-examine any person, if his evidence appears to be essential in order to come to a just decision in the <http://www.judis.nic.in> case. The learned Government Advocate would further submit that the petitioner will have sufficient opportunity to cross examine the witnesses and also to question the witnesses with regard to the documents sought to be filed by recalling the witnesses. The learned Government Advocate relied upon the following judgments of the Hon'ble Supreme Court;-

i) Mohanlal Shamji Soni Vs Union of India and another, reported in 1991- 1-L.W. (Crl) 284=1991 SCC (Cri) 595.

ii) U.T. of Dadar and Nagar Haveli and another Vs. Fatehsinh Mohansinh Chauhan, reported in 2007-1-L.W. (Crl) 7 = (2006) 7 SCC (Cri) 529 and

iii) Rajarjm Prasad Yadav Vs State of Bihar and another, reported in AIR 2013 SC 3081.

8. This Court has carefully considered the submissions made on either side and also the materials placed on record. It is seen that the charge against the accused persons in this case is that they have fabricated a bogus sale deed by impersonation and also by committing forgery. Therefore in order to substantiate this charge, the prosecution has to necessarily prove the case beyond reasonable doubts against the accused persons and the prosecution must be given sufficient opportunity in order to prove the case. A case of this nature is not a private dispute between the parties, but a crime involving moral turpitude which involves public interest.

9. The submission of the learned Counsel for the petitioner that any person, who has not been examined <http://www.judis.nic.in> by the Investigating Officer, cannot be examined as a witness in the Court, in the considered view of this Court is totally unsustainable. The language used under Section 311 of Cr.P.C is very wide

and the very usage of the words “any Court” “at any stage” of “any enquiry, trial or other proceedings” “any person” and “any such person”, clearly spells out that the Section has expressions in the widest possible terms and does not limit the discretion of the Court in any way. The prosecution in order to prove its case, can at any stage examine any person as a witness. Ultimately, the accused persons will get an opportunity of cross examining the witness and therefore, they will not be put to any prejudice, if the prosecution examines any witness, who was not shown in the list of witnesses or who was not examined by the Investigating Officer in the course of investigation. Such a restricted interpretation will defeat the very object of Section 311 of Cr.P.C.

14. It is clear from the above said judgments that a very wide discretion has been given to the Court under Section 311 of Cr.P.C to recall and re-examine the witness. The Court below has rightly exercised its discretion by allowing the petition filed by the prosecution. Ultimately, the accused person will not be put to any prejudice since they will have opportunity to cross examine the witness and also rebut the documents sought to be relied upon by the prosecution.

15. To restrict the examination of the witnesses only to a witness who was examined by the Investigating

Officer and the statements taken under <http://www.judis.nic.in> Section 161 of Cr.P.C and to restrict the reliance upon any other materials, not forming part of the final report, will go against the very principle of fair trial. After all procedure is only the handmaid of justice and it cannot curtail any attempt on the side of the prosecution to prove the case beyond reasonable doubts with all available records and with all available witnesses. The process of trial conducted before the Court of law must unravel the entire truth to enable the Court to come to a just decision in a case. As held by the Hon'ble Supreme Court the accused person will have fair and reasonable opportunity to rebut the evidence brought on record against them. This right is not taken away by allowing a petition under Section 311 of Cr.P.C.”

15. In the above judgment, this Court had considered in detail the scope of Section 311 Cr.P.C., in relation to examining additional witness, who are not shown as a witness in the final report. This Court categorically held that the prosecution in order to prove its case, can at any stage examine any person as a witness and ultimately, the accused persons will get an opportunity to cross-examine those witnesses and no prejudice will be caused by permitting the prosecution to examine the witness, who are not shown in the list of witnesses filed

along with the final report.

16. This Court is of the considered view that the prosecution is not trying to introduce a new case and by examining the additional witness and marking the complaint, it is only trying to substantiate the basic issue regarding the previous enmity/motive of the accused persons. As and when the additional witness is examined, it is always open to the accused persons to cross-examine him and also put questions on the complaint that is sought to be marked through the additional witness. The accused persons will have all the opportunity to establish the defence and no prejudice will be caused to the accused persons, by allowing the 311 application filed by the prosecution.”

12. In the light of principles laid down in the said cases, as rightly, pointed out by the learned Public Prosecutor to arrive correct and just decision of the case, this court comes to the conclusion that it is necessary to recall PW6 and PW10 for making of documents.

13. In the result, this petition is allowed.

Dictated to the Steno Typist Gr-III, transcribed by her, corrected and pronounced by me in open Court, this the 16th day of March, 2026.

Principal District and Sessions Judge,
Perambalur.

PDJ Court,
Perambalur.

Fair/Draft Judgment
Cr.M.P.No.215/2026
in
S.C.No.25/2024
D.D: 16.03.2026.