

**IN THE COURT OF THE PRINCIPAL DISTRICT AND  
SESSIONS JUDGE, RAMANATHAPURAM.**

**PRESENT: Thiru. A.K.MEHBUB ALI KHAN, B.L.M, L.L.M.,  
PG.D.PM/IR, Dip.in.J.J & J.Psy., PG.D.D.F.,  
Principal Sessions Judge, Ramanathapuram.**

**Thursday the 12<sup>th</sup> day of March 2026**

**CrI.M.P. No. 02/2025  
in C.A.No. 60/2024**

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Babu @ Periyasamy ... Petitioner /Appellant

/vs/

The State

through the Inspector of Police,

R.S.Mangalam Police Station.

Cr.No. 09/2011

... Respondent/Complainant

This Criminal Miscellaneous Petition coming before this Court on 07.03.2026 for final hearing in the presence of Thiru.Deva. Manoharan Martin, Advocate for the petitioner/Appellant and of Thiru.B.Karthikeyan, Public Prosecutor for the respondent/complainant and upon hearing the arguments of both and on perusing the records and having stood over till this date for consideration this Court delivers the following :

**ORDER**

The petition filed by the petitioner/Appellant u/s 391 of Cr.P.C. to receive additional evidence and documents.

**2. Contention of the petitioner:**

The petitioner is the appellant in this appeal. He was convicted for the offences u/s 341, 307 and 324 of IPC by the Trial Court on 10.10.2024. He is not connected with the offence and he has been wrongly convicted by the Trial Court, he has filed detailed appeal against the said conviction. His name is Karuppasamy and has all the documents to prove that his name is Karuppasamy. However, all the witnesses examined by the prosecution in this case have deposed that one Babu @ Periyasamy was involved in the occurrence. They have not mentioned the name of Karuppasamy any where. Therefore, he has to examine himself as a witness and produce documents to prove that he is Karuppasamy and not Babu @ Periyasamy. Unless, the petition is allowed and he is permitted to be examined as witness and produce documents, he would be put to irreparable loss and hardships. Therefore, he prays to allow the petition and permit him to examine himself as an additional witness and produce documents.

**3. Counter of the Respondent**

The prosecution has objected that during the entire trial, the accused did not object at any point of time that his name is Karuppasamy and he is not Baby @ Periyasamy. Even when questioned u/s 313 (1)(b) Cr.P.C., he has not given any answers denying that he is not Babu @

Periyasamy and even when NBW was issued against him by the Chief Judicial Magistrate Court, Ramanathapuram, he had filed petition to cancel the same by mentioning his name as Babu @ Periyasamy. A similar, petition to examine himself was filed before the Trial Court in CrI.M.P. No. 6963 of 2024 but was not pressed and so it was dismissed on 10.09.2024. Thus, the petitioner has admitted on several occasions that his name is Babu @ Periyasamy. This petition is filed only to delay the proceedings. Therefore, he prays to dismiss the petition.

**4. Point for consideration:**

**Whether the petition be allowed and the petitioner be permitted to produce additional evidence?**

**5. Answer to the point:**

**5.1** This petition is filed by the Appellant/accused to receive additional evidence in the appellate stage so as to prove that his name is Karuppasamy and not Babu @ Periyasamy who is accused in this case. He has contended that all the witnesses have deposed that Babu @ Periyasamy was involved in the occurrence and they have not stated the name of Karuppasamy. Therefore, in order to prove and establish that he is not the accused who was involved in the offence, he has to examine himself as a witness and produce documents to show that his name is Karuppasamy. Therefore, he prays to allow the petition.

**5.2** This petition is resisted by the prosecution stating that even

though sufficient opportunities were available to him during the trial, he has not availed them and has not denied or objected that his name is not Babu @ Periyasamy. It is further contended by the prosecution that even in the petitions to cancel the NBW issued against him, he has mentioned his name as Babu @ Periyasamy. At no point of time, during the entire trial including when the accused was questioned u/s 313 (1)(b) Cr.P.C., the accused raised objections that his real name is Karuppasamy and he is not the one named in the final report. Therefore, he prayed to dismiss the petition.

**5.3** In this regard, it is relevant to refer to the provision u/s 391 of Cr.P.C. that reads as follows:

*“ 391. Appellate Court may take further evidence or direct it to be taken.—(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.*

*(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall*

*thereupon proceed to dispose of the appeal.*

*(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.*

*(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry”.*

Thus, it is evident that the appellate court has powers to either take additional evidence by itself or direct the Trial Court to take such evidence, but only if the appellate Court thinks that the additional evidence is necessary to render Justice. The legal position on this subject is well settled by catena of decisions of the Hon'ble Supreme Court and the upshot of that all those decisions by the Hon'ble Supreme Court is that the power conferred u/s 391 of Cr.P.C. (432 of BNSS) on the appellate Court is to secure ends of justice. The ultimate object of Judicial administration is to secure the ends of Justice and the Court exists for rendering Justice to the people. But at the same time, the said power u/s 391 of Cr.P.C. (432 of BNSS) cannot be invoked in a casual or routine manner but only when it is found that the non receiving an additional evidence would lead to failure of justice. In this regard, the Hon'ble Supreme Court in **“Ashok Tshering Bhutia -vs- State of Sikkim”**<sup>1</sup> has summarised the law on the subject as follows:

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<sup>1</sup> 2011 INSC 162 : (2014) 4 SCC 402

*“Additional evidence can be taken at the Appellate stage in the exceptional circumstances, to remove an irregularity, where the circumstances so warrant, in public interest. However, the provision of section 391 of Cr.P.C.( 432 of BNSS) cannot be pressed into the service in order to fill up lacunae in the prosecution's case.”*

5.4 Similarly, in *“Ajitsinh Chehuji Rathod -vs- State of Gujarat”*,<sup>2</sup> the Hon'ble Supreme Court held thus:

*“ The power to record additional evidence u/s 391 of C.P.C. should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that non recording of such evidence may lead to failure of Justice.”*

Therefore, it is well settled that the Court could invoke the powers u/s 391 if such evidence is absolutely necessary to prevent miscarriage of justice and also only if the party was prevented from presenting the same at trial despite due diligence.

5.5 In this case, the petitioner has contended that he is not the person named Babu @ Periyasamy, and his name is Karuppasamy. However, he has not taken any steps to establish the same during the Trial.

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<sup>2</sup> 2024 INSC 63 : (2024) 4 SCC 453

However, even in the answers to the incriminating circumstances put to him u/s 313 (1)(b) of Cr.P.C. also do not reveal that he has claimed to be Karuppasamy and not Babu @ Periyasamy who is accused in this case. This Court feels that the claim of the petitioner that he is not the accused, ought to have been addressed by the Trial Court by giving opportunity to the petitioner to establish and prove his original name. It is found that even though an application was filed by him in CrI.M.P. No. 6963 of 2024, the same was not pressed and was ultimately dismissed by the Trial Court. The reasons for not pressing the said petition are not put forth before this Court. However, when the very identity of the accused is in question in this case, the interest of Justice warrants that an opportunity must be given to the accused to prove his identity and to establish that he is not Babu @ Periyasamy.

**5.6** The contention of the Public Prosecutor that even in the petitions to cancel the NBW issued against him, the petitioner has mentioned his name as Babu @ Periyasamy cannot be taken as a valid ground to dismiss the petition or as an admission made by the accused that he is Babu @ Periyasamy, because when the name of the accused is mentioned as Babu @ Periyasamy in the charge sheet and this accused has been produced before the Court under the premise that he is person named Babu @ Peiyasamy, it cannot be expected that he would file the petition in some

other name which would lead to complicities. Therefore, it could be understood that the petition was filed in the name of the accused and the person against whom the NBW was issued.

5.7 It is worthwhile to remind the observation of the Hon'ble Supreme Court in "*Briz. Sukhjeet Singh (Rtd) MVS -vs- State of Uttar Pradesh and others*"<sup>3</sup> holding as under:

*"There are no fetters on the power u/s 391 of Cr.P.C. of Appellate Court. All powers are conferred on the Court to secure ends of Justice. The ultimate object of judicial administration is to secure ends of Justice. Courts exist for rendering justice to the people."*

Therefore, following the said decision and considering the peculiar circumstances of this case which warrant that an opportunity must be given to the accused to establish that he is not the person named Babu @ Periyasamy, who is accused in this case, but he is Karuppasamy. No serious prejudice would be caused to the prosecution if such an opportunity is given to the accused. However, if no such opportunity is given the petitioner he would be condemned without providing sufficient opportunities to establish his identity, which is against the principles of criminal jurisprudence and the interests of Justice.

5.8 Therefore, it is held that in order to meet the ends of Justice and to remove the irregularity, additional evidence has to be received at the

<sup>3</sup> 2019 INSC 91 : 2019 SCC On line SC 72

appellate stage since the case contains exceptional circumstances and the life and liberty of the accused are at stake.

**5.9** In fine, it is held that the petition is maintainable and is allowed and the petitioner be permitted to give additional evidence and produce documents to establish that he is Karuppasamy. Since, the provision u/s 391 of Cr.P.C. enables the Appellate Court to either take such evidence itself or direct it to be taken by a Magistrate, this Court deems it appropriate that such evidence shall be taken by this Court itself. This point is decided accordingly.

In the result, the petition is allowed and the petitioner is permitted to let in additional evidence and examine himself and to produce documents before this Court to show that he is Karuppasamy and not the person named Babu @ Periyasamy who is accused of the offences in this case.

Dictated to Executive Assistant and transcribed and typed by her in computer, corrected and pronounced by me in open Court on this the 12<sup>th</sup> day of March 2026.

Principal Sessions Judge,  
Ramanathapuram.

**Witnesses and documents on  
either side** : NIL

Principal Sessions Judge,  
Ramanathapuram.