

**IN THE COURT OF DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
KAMUTHI.**

**Present: Tmt.G.Thanga Karthika, B.Sc.,B.L.,
District Munsif cum Judicial Magistrate,
Kamuthi.**

Tuesday, the 05th day of May 2026

CrI.M.P No. 55/2026

in

C.C.No. 160/2023

1. A.G. Murugan,

2. Thilagavathy

...

Petitioner/Accused

-/Vs/-

Arumugam

...

Complainant

Order

Petition filed U/s 311 of Cr.P.C/ 348 of BNSS for recalling the witnesses adduced by the complainant / Respondent

1. Brief of the Petition:

i. As per the petition, the respondent filed a private complaint against the petitioners, which was taken cognizance on the file of this Court under Sections 166, 167 and 219 of IPC, in which PW1 to PW5 were examined on the side of the respondent. After issuance of process by this Court on 14.12.2023, in the absence of the petitioners, the respondent and four other witnesses were examined. Being aggrieved by the very institution of the proceedings, the petitioners preferred a quash petition before the Madurai Bench of Madras High Court in CrI.O.P.(MD) No.14387 of 2024, wherein they obtained an interim order in CrI.M.P.(MD) No.8947 of 2024 on 30.08.2024, by which the appearance of the petitioners before this Court was dispensed with by the Hon'ble High Court. Moreover, the petitioners had not received copies of the documents appended to the private complaint except a copy of the complaint itself. On 14.12.2023, as many as 29 exhibits were marked through PW1 to PW5. The petitioners came to know about those exhibits only after receiving the typed set of papers filed by the respondent in the aforesaid quash petition.

ii. In a criminal case, it is imperative on the part of the prosecution to furnish all relied upon documents to the accused free of cost. Since the necessary documents

were not furnished, the petitioners were unable to effectively cross-examine the witnesses.

iii. Further, PW6, namely Solaimari Karuppasamy, in the murder case referred to in the private complaint in Cr.No.232/2024 registered on the file of Kamuthi Police Station, has challenged the judgment of acquittal delivered in the said case before the Madurai Bench of Madras High Court in C.A.(MD) No.202 of 2024, wherein notice has been ordered to the accused persons. In the said appeal, the present private complainant/respondent Arumugam, who was shown as Accused No.2 in the original case, has been arrayed as the 3rd respondent, and the matter is still pending adjudication. Only by cross-examining the witnesses can those aspects be properly brought on record and appreciated.

iv. Further, the petitioners submitted that the convention generally followed by the trial Courts is that whenever the validity of proceedings is challenged before the superior Court by filing a quash petition, and when such petition has been entertained and an interim order has been granted after hearing the parties, the trial Court ordinarily defers further proceedings, at least until the stay petition is decided. In the present case, admittedly, the stay petition filed along with the quash petition is still pending and has not been dismissed by the Hon'ble High Court. In such circumstances, the respondent ought not to have insisted upon further proceedings before this Court. That apart, unless an opportunity is afforded to the petitioners to cross-examine the witnesses, the petitioners would be put to irreparable loss and great hardship. Hence, the petitioners prayed that this petition may be allowed.

2. Brief of Counter filed by the respondent:

i. The respondent contended that all the facts made in the petition are denied except those specifically admitted in the counter. According to the respondent, the complainant side evidence in the main case was concluded on 14.12.2023 and, despite sufficient opportunities, the petitioners had not come forward to cross-examine the witnesses already examined on the side of the respondent and had intentionally dragged on the proceedings for the past three years. Hence, in the absence of any change in circumstances, the petition filed under Section 311 of Cr.P.C. is not maintainable in law. The respondent further submitted that on

14.12.2023, five witnesses were examined on the complainant side and 29 documents were marked through them. On the very same day, the counsel for the petitioners was present before the Court and filed a petition under Section 317 of Cr.P.C. seeking to condone the absence of the petitioners. Thereafter, on 30.01.2024, the petitioners filed copy application in C.A.No.18 of 2024 before this Court and obtained copies of all the exhibits marked on the side of the respondent. It is further contended that this Court had granted nearly two years time to the petitioners to cross-examine the witnesses, from 14.12.2023 till 01.09.2025. Though the petitioners had filed a quash petition before the Madurai Bench of Madras High Court along with petitions seeking dispensation of appearance and stay of proceedings, the Hon'ble High Court had allowed only the dispensation petition, whereas the stay petition is still pending as on date. According to the respondent, the petitioners misled this Court by filing memos dated 24.04.2025 and 30.04.2025 falsely representing that a stay order had been granted by the Hon'ble High Court.

ii. The respondent further submitted that the first petitioner, A.G. Murugan, was the Investigating Officer in Cr.No.232 of 2014 registered on the file of Kamuthi Police Station. The said case was disposed of by the Additional Sessions Court (Mahila Court), Ramanathapuram and a judgment of acquittal was passed. In the said judgment, it was observed that the Investigating Officer had not conducted proper investigation, and a copy of the judgment was directed to be forwarded to the D.I.G. and Superintendent of Police, Ramanathapuram, for appropriate action. Thereafter, the brother of the complainant, namely Prabhakar, filed a petition before the Additional Superintendent of Police seeking details regarding the action taken pursuant to the judgment, and a reply was issued stating that proceedings for issuance of memo to the first petitioner had been forwarded to Dindigul District on 25.09.2025.

iii. The respondent also contended that after the acquittal judgment, the complainant filed a return of property petition in CrI.M.P.No.199 of 2025, wherein the petitioners raised objection stating that no appeal had been filed against the acquittal judgment and therefore there was no necessity to mention the appeal proceedings in the petition. According to the respondent, despite several

opportunities granted by this Court, the petitioners deliberately evaded cross-examination of the witnesses. Consequently, this Court closed the opportunity for cross-examination and posted the matter for questioning under Section 313 of Cr.P.C. Even thereafter, for four hearings, the petitioners failed to appear before the Court, resulting in issuance of Non-Bailable Warrants against them. Subsequently, the petitioners surrendered before this Court and, during questioning under Section 313 of Cr.P.C., stated that they were willing to adduce defence evidence. Accordingly, the case was posted for defence side evidence. However, instead of adducing evidence, the petitioners filed the present petition seeking recall of witnesses for cross-examination. Hence, according to the respondent, the petition has been filed solely to protract the proceedings and therefore the same is liable to be dismissed.

3. The point for determination is,

Whether the petition is liable to be allowed or not?

4. Discussion:

I. On perusal of the records and documents available before this Court, it is seen that the respondent is the complainant in C.C.No.160 of 2023 (present case) on the file of this Court. The respondent filed a private complaint before this Court and, after complying with the prescribed procedure, the same was taken on file. After numbering of the case, this Court issued process to the accused/petitioners. Upon receipt of summons, the petitioners appeared before this Court and engaged a counsel, who filed vakalat on their behalf. Copies of the relevant documents were also furnished to them. Thereafter, the case was posted for recording of evidence.

II. On 14.12.2023, the petitioners were absent and the petition filed on their behalf seeking condonation of absence was allowed. On the said day, the complainant along with four other witnesses were examined and 29 exhibits were marked through them in the presence of the counsel appearing for the accused. Hence, this Court is unable to accept the contention that the witnesses were examined behind the back of the petitioners, since under Section 273 of Cr.P.C., evidence may be recorded in the presence of the accused or their pleader. Admittedly, on the date of examination of witnesses, the counsel appearing on behalf of the petitioners was present before the Court.

III. Further, the petitioners contended that the honourable Madurai Bench of Madras High Court had granted an interim stay order, whereas the respondent specifically denied the same. Accordingly, this Court directed the petitioners to produce a copy of the stay order. However, the petitioners failed to produce any such order passed by the Hon'ble High Court.

IV. The petitioners further contended that they came to know about the marking of the 29 exhibits only after receiving the typed set of papers in the quash proceedings. However, when the exhibits were marked, the counsel representing the petitioners was admittedly present before the Court. Therefore, the petitioners cannot now contend that they were unaware of the said documents.

V. Moreover, this Court had already granted sufficient opportunity to the petitioners for cross-examining the witnesses. The petitioners have not satisfactorily explained the circumstances under which they were prevented from cross-examining the witnesses within the time granted. This Court cannot invoke Section 311 of Cr.P.C. in a mechanical manner for recalling witnesses without sufficient cause being shown. Accordingly, this petition is dismissed.

Dictated by me to Steno-Typist and typed by her corrected and pronounced by me in open court on 05.05.2026.

District Munsif cum
Judicial Magistrate, Kamuthi