

IN THE COURT OF THE FAST TACK COURT, KARAIKUDI

PRESENT : Thiru. J.Karmegakannan, B.A., B.L.,

Judicial Magistrate,

Fast Track Court, Karaikudi.(FAC)

Friday the 16th day of May 2025

C. C. No:113/2023

in

CRLMP.No.2441/2024

Mallika,
W/o. Arumugam,
6, Sethu Nagar 2nd Street,
Palayur,
Kandanur Post,
Karaikudi.

.....Petitioner/ Accused

Vs

P. Shanmugam,
S/o. Panchanathan,
No. 3/4/12, Nethaji Street,
Kandanur,
Karaikudi Post,
Sivagangai District.

.....Respondent /Complainant

This petition is coming on 16.05.2025 for final consideration before me, in the presence of Mr. A.V. Rajendran for the Petitioner and Mr. L. Balasubramaniam for the respondent and upon hearing both side, and perusing the case records, this court delivered the following:

ORDER

1.This petition has been filed, by the petitioner/ accused under section 311 of CrPC, seeking to reopen and recall of PW1 for cross examination.

2. Respondent is the complainant in the main case, had filed a complaint under section 138 of Negotiable Instruments Act, 1881 regarding dishonour of cheque bearing 027283 dated 28.03.2023 for an amount of Rs. 4,25,000/-, drawn on ICCI bank, Kandanur Branch, on account of discharge of existing liability of the petitioner/ accused.

3. The petitioner averred in the petition that on 30.07.2024, when the matter has been posted under the caption for cross examination complainant / PW1, due to boycott of the advocates, the counsel for the petitioner unable to cross examined the PW1. Therefore, cross examination was closed and posted for further complainant side. Thereafter, the matter posted on 20.08.2024, for complainant side further evidence, even on that day, the counsel for the petitioner/ accused could not be appeared, since, he went to High Court. Hence, he filed an present petition to reopen and recall of PW1 for accused side cross examination.

4. Per, contra, the respondent/ complainant filed an counter and contending that the petitioner/ accused filed an present application only to dragging the proceedings. The respondent further contended that, despite being provided with an opportunity on several days i.e. on 10/06/2024, 01/07/2024, 12/07/2024, 30/07/2024 to the petitioner for cross examination of PW1/ complainant, the petitioner has not come forward for the same and only after granting sufficient opportunity the court was closed the cross examination of PW1. However, after

lapse of several opportunities, the petitioner/ accused moved and an present and application and the same cannot be allowed and thus he pressed upon this court to dismiss the petition.

5. I have heard the learned Counsel for the petitioner and the respondent. I have gone through other connected materials for appreciating the rival contentions.

6. Admittedly, this application filed by the petitioner/ accused is second time for cross of PW1. Initially on 22.05.2024, the application filed by the petitioner under section 311 of CrPC, for reopen and recall was allowed and thereafter, this present application has been filed once again. However, on perusal records it is seen that the petitioner/ accused not cross examined the PW1 even once when he is the star witness in this case.

7. Moreover, the petitioner is facing trial under Section 138 of N.I. Act, wherein the statutory presumption is against her. Only by recalling of the witness and by cross examination, she can dislodge the statutory presumption to put forth his defence. The evidence of a witness is complete only after cross examination thereby testing the veracity of witness.

8. In this circumstances, it is necessary to mentioned the judgment of the Hon'ble Apex Court in the case of Rajaram Prasad Yadav vs State of Bihar and others reported in Crl.A.No.830 of 2013 laid down the principles to be followed while

considering an application under section 311 of Cr.P.C, which reads as follows:-

(a) Whether the Court is right in thinking that the new evidence is needed by it?

Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

(b) The exercise of the widest discretionary power under Section 311 Cr.P.C should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

(C) 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.

(d) The exercise of power under Section 311 Cr.P.C should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

(e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

(f) The wide discretionary power should be exercised judiciously and not arbitrarily.

(g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

(h) The object of Section 311 Cr.P.C simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

(i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

(j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

(k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

(l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

(m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

(n) The power under Section 311 of Cr.P.C must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right [Rajaram Yadav v State of Bihar, AIR 2013 SC 3081 : 2013 Cr LJ 3777 (SC) : (2013) 14 SCC 461].'

9. Hence, considering the case on hand in line with the above said dictum of the Hon'ble Apex Court and in order to provide one more final opportunity to the petitioner for make out his case, this Court is inclined to allow this petition. However, it cannot be without compensating the respondent/ complainant, when he is always ready to come to witness box. Hence, this court proceed to pass following orders.

10. In the result the petition is stands allowed subject to payment of cost of Rs.1,500/- payable by the petitioner/ accused to the respondent/ complainant

within one week i.e. on or before 23.05.2025. Failing which, the petition will be automatically dismissed without any further reference.

(S/d. Thiru. J.Karmegakannan, B.A., B.L.,)
Judicial Magistrate,
Fast Track Court at Magisterial Level,
Karaikudi.(FAC)