



IN THE COURT OF JUDICIAL MAGISTRATE AT UTHAMAPALAYAM

Present: Thiru. P.Kamarasu, B.A.,B.L.,

Judicial Magistrate, Uthamapalayam

On this 22nd day of May 2026

M.P. No. 04 of 2026

in

C.C. No. 357 of 2023

Hariharan

... Petitioner/Accused

-Vs-

The State,

Rep. by Sub-Inspector of Police,

Cumbum North P.S.

... Respondent/Complainant

This petition is filed by Learned Advocate Thiru. M.S.Muthukumaran. After considering the petition and the reply given by the APP Grade-II, this court delivers the following

ORDER

1. This petition has been filed by both the accused seeking an Order for recall of PWs-1 to 3 for the purpose of cross-examination.
2. The contention of the petitioner is that the PWs-1 & 2 were examined on 18.06.2024. The PW-3 was examined on 24.02.2025. The PWs-1 to 3 were not cross-examined on such dates due to non-availability of necessary documents. The non-cross-examination was neither willful nor wanton. It is necessary and essential to cross-examine the PWs-1 to 3. Otherwise, the petitioner will sustain severe hardship and loss.
3. The prosecution has filed a counter stating that the the PWs-1 & 2 were examined on 18.06.2024 and the PW-3 was examined on 24.02.2025. Even though the defence side was given due opportunity to cross-examine the PWs-1 to 3, it was the defence, who knowingly failed to utilize the said opportunity. The intention of the defence is to drag on the completion of the trial and the same should not be permitted. The prosecution has also relined on *“Vinod Kumar versus State of Punjab, (2015) 3 SCC 220* for the preposition that the cross-examination shall be



done on the same day when the chief-examination was done.

4. This court heard the rival contentions of the both sides. Admittedly, the PWs-1 & 2 were examined on 18.06.2024 on which date due opportunity for cross-examination was also given to the defence side. Likewise, the PW-3 was examined on 24.02.2025 on which date due opportunity for cross-examination was also given to the defence side. It is also undeniable fact that it was the defence, who knowingly failed to cross-examine the PWs-1 to 3 though defence Counsel was duly present. Further, this petition has been filed only on 22.05.2026. There is no explanation/reason adduced by the petitioners for such long delay. The significant to be noted is that the petitioner is not co-operating for the disposal of this C.C.

5. Having knowingly failed to utilize the opportunity, it is not fair on the part of the petitioner to seek the recall of PWs-1 to 3. No reason much less sufficient and acceptable reason has been adduced by the petitioner for the recall of PWs-1 to 3. Hence, this petition lacks bonafide. Admittedly, the PWs-1 to 3 were not at all cross examined by any of the Accused. In such circumstances, this court is of the view that one more opportunity may be provided to the defence to cross-examine the PWs-1 to 3. At the same time, the delay caused due to the fault of the petitioner has to be necessarily viewed seriously. In such a view of the matter, this petition is allowed subject to following conditions.

6. In the result, this petition is allowed on conditions (i) the defence/petitioner shall complete the cross-examination of PWs-1 to 3 as and when they are brought before this court, (ii) the petitioner shall pay Rs.1,000/- to each of witnesses i.e. PWs-1 to 3 towards the cost at the time of their appearance before this court failing which this petition shall stand be automatically dismissed.

Dictated to the Steno-typist, transcribed and computerized by him, corrected and pronounced by me in open Court on this the 22nd day of May 2026.

**Judicial Magistrate,
Uthamapalayam.**