



IN THE COURT OF JUDICIAL MAGISTRATE AT UTHAMAPALAYAM

Present: P.Kamarasu, B.A.,B.L.,
Judicial Magistrate, Uthamapalayam

On this 24th day of April 2026

M.P. No. 23 /2026

in

C.C. No. 336/2023

1. Ramathevar
2. Selventhiran
3. Devaraj
4. Muthuraj ... Petitioners/Accused

-Vs-

The State,

Rep. by Inspector of Police,

DCB, Theni. Cr.No.34/2013

... Respondent/Complainant

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

ORDER

This petition has been filed by the accused seeking an Order for recall of PW-12 for the purpose of cross-examination.

1. The contention of the petitioner is that PW-12 was examined on 10.02.2026 & he was not cross-examined on that day due to unavoidable reason. The non-cross-examination was neither willful nor wanton. It is necessary and essential to cross-examine the PW-12. Otherwise, the petitioners will sustain severe hardship and loss.

2. The prosecution has filed a counter stating that the PW-12 was examined on 10.02.2026 on which date the petitioners and their Counsel were present. Even though the defence side was given due opportunity to cross-examine the PW-12, 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 relied on “*Vinod Kumar versus State of Punjab, (2015) 3 SCC 220* for the proposition



that the cross-examination shall be done on the same day when the chief-examination was done.

3. This court heard the rival contentions of both sides. Admittedly, the PW-12 were examined on 10.02.2026 on which date due opportunity for cross-examination of pW-12 was also provided to the defence side. It is also undeniable fact that it was the defence, who knowingly failed to cross-examine the PW-12 though the petitioners and their Counsel were duly present. Further, this petition has been filed only on 06.04.2026. There is no explanation/reason at all adduced by the petitioners for such delay. The significant to be noted is that the petitioners are not co-operating for the disposal of this case.

4. Having knowingly failed to utilize the opportunity, it is not fair on the part of the petitioners to seek the recall of PW-12. The reasons assigned by the petitioners are not only bereft but also insufficient. Hence, this petition lacks bonafide. Admittedly, the PW-12 was not at all cross examined by 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 PW-12. At the same time, the delay caused due to the fault of the petitioners has to be necessarily viewed seriously. In such a view of the matter, this petition is allowed subject to following conditions.

5. In the result, this petition is allowed on conditions (i) the defence/petitioners shall complete the cross-examination of PW-12 as and when they are brought before this court, (ii) the petitioners shall pay Rs.2,000/- to the witness i.e. PW-12 towards the cost at the time of his 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 24th day of April 2026.

**Judicial Magistrate,
Uthamapalayam.**