

**IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
TIRUVANNAMALAI, TIRUVANNAMALAI DISTRICT**

**PRESENT: Thiru. B.C. GOPINATH, M. L.,  
Additional District and Sessions Judge,  
Tiruvannamalai**

Tuesday, the 26 th day of November 2024

**CrI.M.P.No.249/2024**

**in**

**SC.No. 27/2015**

1. John Victor,

2. Mary Stella

3. Vimala

All are residing at Vettavalam Colony,  
Kilpennathur circle.

.... Petitioners / Accused

Vs.

State represented by

The Inspector of Police,

Vettavalam Police Station,

Crime No.67/2013

U/S/ 294(b), 302,352 and 302 r/w 34 IPC

.... Respondent / Complainant

This petition came before me for final hearing on 20.11.2024 in the presence of Thiru. D.Kumar, Advocate for the petitioners and Thiru. N. Palani, Additional Public Prosecutor for the Respondent / Complainant and upon hearing arguments on both side and perusing the case records, this Court passed the following....

**ORDER**

This is a petition u/s. 311 of Crpc , filed by the accused in SC.No.27 / 2015 to recall PW1, PW3 and PW11 for the purpose of further cross examination.

**2) Petitioners case in brief:**

In the above case, prosecution has examined PW1, PW3 and PW11 and they were also cross-examined by the petitioners / Accused. The petitioners filed a petition u/s.91 Cr.Pc., to send for records from Pondicherry JIPMER Hospital and those documents have been received . PW1, PW3 and PW11 though cross-examined, have not been questioned with regard to the documents now received u/s.91 Cr.Pc., It is very important for the petitioner to cross-examine the witnesses in respect of those documents to arrive at a just decision . Hence the petition.

**3) Averments in the Counter in brief :-**

The petition is not maintainable in law and or on facts. The petitioners have been filing various petitions in the last 5 years to delay finality to the prosecution launched against them. PW1, PW3 and PW11 who are sought to be recalled have already been examined on 13.07.2018 and 07.01.2021. After 4 years, the petitioners on 20.07.2022 filed two petitions u/s.91 Cr.Pc. to send for records. The contradictions with regard to those documents can be clarified through the Investigation Officer. The occurrence took place on 13.03.20213 and the petition has been filed with the sole intention of protracting the proceedings without merits. Hence this petition is liable to be dismissed.

**4)** During enquiry no evidence, oral or documentary was let in. This Court has perused the materials on record and has considered rival submissions.

5) Now the Point for Consideration is whether the PW1, PW3 and PW11 can be recalled for further cross examination or not ?

6) **Point** : -

From the records it is seen that the petitioners / A1 to A3 are facing charges u/s.294(b), 302, 352, 302 r/w 34 of IPC in Cr.No. 67 / 2013. Records further reveal that final report was laid by the respondent before the Judicial Magistrate No.II, Tiruvannamalai and it was committed to the (court of Sessions in PRC No.15/2014). After the case was made over to this court, PW1 to PW5 were examined-in-chief and cross on 13.07.2018. Certain other witnesses were later examined. Trial protracted and after the intervention of COVID-19, pandemic on 07.01.2021 LW9 was examined as PW11. Thereafter, the other witnesses listed by the prosecution except the Investigating Officers have been examined. At that point of time, the petitioners appear to have filed CrI.M.P.No. 153 / 2022 and 154 / 2022 to send for records and records were received from the JIPMER Hospital, Pondicherry on 07.06.2004 by my learned predecessor. Now the petitioners want to recall PW1, PW3 and PW11 for the purpose of further cross-examining them with regard to the document received from the JIPMER Hospital, Pondicherry.

7) There is no doubt or hesitation in saying that the petitioners have taken the court for a ride. It is an occurrence of the year 2013 and the witnesses sought to be recalled have already been examined in chief and also cross-examined. From the records, the statement of those witnesses a u/s. 161(3) of Cr.PC., are clear to the

extent that the deceased was taken to JIPMER Hospital at Pondicherry for further treatment. Therefore it is not a fact which has been suppressed by the prosecution. The petitioners had every opportunity to cross-examine PW1, PW3 and PW11 in respect of the treatment, way back to the 2018 and 2021. But however after an unexplained delay, they filed a petition to send for medical records from the JIPMER Hospital and the same has been allowed by this court with costs. Now as a consequence, the petitioners want to recall PW1, PW3 and PW11 to further cross-examination of those witnesses. Although it appears that the petitioners have truly taken the court for granted by playing dilatory tactics, since the court has already allowed a petition to send for documents by imposing costs, interest of justice again requires this court to recall those witnesses. Otherwise sending for those documents will be defeated. Hence this court is inclined to allow the petition by imposing costs. This point is answered accordingly.

In the result, the petition is allowed on condition that Rs.1000/- is paid as costs to recalled PW1,3 and PW11 and a further sum of Rs.500/- is paid to the District Legal services Authority, Tiruvannamalai on or before 10.12.2024. c/o. 11.12.2024.

Dictated to the Steno-Typist of this Court, transcribed by her in computer, corrected and pronounced by me in open court, this the 26<sup>th</sup> day of November, 2024.

**Additional District and Sessions Judge,  
Tiruvannamalai.**

