

**IN THE COURT OF PRINCIPAL DISTRICT AND SESSIONS JUDGE,
TIRUVALLUR**

**PRESENT: Dr.J. JULIET PUSHPA, Ph.D.(Law)
Principal District and Sessions Judge, Tiruvallur**

Wednesday, the 11th day of March, 2026

**Criminal Revision Petition No.8/2026
(CNR No. TNTR010016242026)**

**As against
The Order of the Judicial Magistrate No.I, Poonamallee in
Crime No.10/2026 dated 05.02.2026)**

State represented by
The Inspector of Police,
Central Crime Branch , EDF-I , Avadi Police station
Crime Noo.10/2026

.....Revision Petitioner/Complainant

/Vs/

Mondem Sreenivasulu,
S/o Guruvaiah,

....Respondent/Complainant

Vinothkumar,
S/o Vijayakumar

...Intervener/defacto complainant

This petition coming on 06.03.2026 for final hearing before me in the presence of M/s Thiru.S. Murthy, learned Public Prosecutor appearing on behalf of State / petitioner , M/s A. Bala Manikandan, C. Vinayagamorthy, learned counsel for the respondent/complainant and M/s GXN. Suresh, M. Thiruvengadam, B. Kaviarasu, Nijamudden, counsel for the intervener / defacto complainant and upon hearing both side, perusing the records and materials , and having consideration of the matter till this day, this Court made the following....

ORDER

This petition is filed u/s 438 r/w 440 BNSS to call for records in Order of rejection of remand in Crime No.10/2026 dt. 05.02.2026 in respect of the respondent/accused on the file of Judicial Magistrate No.I, Poonamallee and set aside the same.

The learned Judicial Magistrate No.I, Poonamallee has rejected the remand requisition of the revision petitioner as against the respondent/accused concerned with Crime No.10/2026 on the file of Central Crime Branch, EDF-I, Avadi, Chennai for the offences u/s 406, 420 IPC.

2. Aggrieved over the order of rejection of remand in respect of the respondent/accused, the petitioner/ the Inspector of Police, CCB, EDF-I, Avadi Police station has preferred this revision to set aside the orders of the Judicial Magistrate No.I, Poonamallee on the following grounds :

- (a) order of rejection of remand in Crime No.10/2026 in respect of the respondent is illegal, arbitrary and is a complete non application of judicial mind
- (b) The learned Judicial Magistrate No.I, Poonamallee wrongly concluded that the accused lodged a complaint much prior to that of complainant. this finding is factually incorrect, as the defacto complainant's CSR is dated 21.04.2025 and the complaint was further escalated to Avadi Commissionerate office on 09.07.2025. In contrast, the accused complaint to Chennai Commissionerate is dated 28.05.2025 and was subsequently closed on 09.10.2025 on the ground that no prima facie case was made

out. No FIR was registered on the basis of accused complaint, thereby the judicial discretion founded upon demonstrably erroneous chronology vitiates the order renders it perverse

- (c) The learned Judicial Magistrate No.I, Poonamallee wrongly travelled beyond limited jurisdiction by evaluating defence material and observed touching merits of the case, thus remand proceedings has been converted into a premature adjudication.
- (d) Arrest in service of notice u/s 35 of BNSS 2023 is regulated and the Investigating Officer has complied with statutory requirements and furnished the grounds of arrest at the time of production before learned Judicial Magistrate.
- (e) At the remand stage, it is incumbent upon the learned Judicial Magistrate No.I, Poonamallee to decide only about the necessity of custody and safeguards were complied with. However, impugned order does not reflect any independent judicial satisfaction regarding statutory compliance . Instead, the accused was enlarged on bail without proper consideration of arrest safeguards.
- (f) The learned Judicial Magistrate No.I, Poonamallee failed to note that the accused is involved in similar crime case in Crime No.569/2025 dated 15.07.2025 of Puzhal Police station for the offence u/s 406 and 420 IPC which shows the repeated conduct and criminal propensity. The impugned order does not indicate consideration of these material aspects which

amounts to non-application of mind.

- (g) learned Judicial Magistrate No.I, Poonamallee failed to note that the properties as assets involved in the case were yet to be seized and granting bail without imposing any condition would seriously prejudice and paralyse the investigation.
- (h) Subsequent to grant of bail, a separate FIR in Crime No.44/2026 dt. 14.02.2026 has been registered at Ayyapakkam Police station for the offence u/s 296(b), 351(3) and 66D of IT Act disclosing threat, intimidation and abusive communications and digital harassment, hence, witness tampering the criminal intimidation. Liberty granted by the Court cannot be misused
- (i) The learned Judicial Magistrate No.I, Poonamallee failed to consider the magnitude of monetary involvement, dishonour after stop payment, pattern of similar allegations and subsequent intimidation, FIR and bail orders ignoring material aspects
- (j) The learned Judicial Magistrate failed to consider that arrest and remand is necessary in cases where police has a reason to believe that the arrest is necessary for preventing further offence.
- (k) The learned Judicial Magistrate failed to pass order of remand and violated the provisions of section 35 of BNSS
- (l) Though the remand report contains all the prima facie compliance u/s 35 of BNSS the rejection of remand is complete violation of law and

miscarriage of justice.

Hence, the impugned order of the learned Judicial Magistrate No.I, Poonamallee in Crime No.10/2026 of CCB, EDF-I, Avadi Police station dated 05.02.2026 must be set aside.

3. No oral or documentary evidence adduced by both side in this petition. Written arguments of the respondent/accused and also the defacto complainant/ intervener filed.

4. Now, the point for consideration is

1. **Whether the order of the learned Judicial Magistrate No.I, Poonamallee dated 05.02.2026 was passed in accordance with Law ?**
2. **Whether this Criminal Revision is to be allowed ?**

5. POINT :

Heard both sides .

This Criminal Revision is preferred by the Investigating Officer/ Inspector of Police, CCB, EDF-I, Avadi Police station in Crime No.10/2026 for the alleged Offence u/s 406, 420 IPC as against the order of the learned Judicial Magistrate No.I, Tiruvallur dated 05.02.2026 rejecting the remand requisition of the respondent/accused in the above case.

6. The case of the revision petitioner is that the remand requisition was made before the Judicial Magistrate No.I, Poonamallee for the alleged offence under Section 406, 420 IPC for the alleged cheating of the defacto complainant by giving

stop payment after issuing the cheques issued to the defacto complainant. The case of the prosecution elicits that the accused and the defacto complainant acquainted as the defacto complainant was doing audit work for the company of the accused M/s Astromed Health Care India Private Limited, and subsequently on the representation of the accused that he will pay the share on the investment of the defacto complainant in the development of the company, the accused obtained totally about Rs.1,00,00,000/- (one crore rupees) which was given by the defacto complainant through bank transactions towards investment of the defacto complainant. However, subsequently, since there was no profit sharing or share in the company, when the defacto complainant demanded to repay the amount obtained by the accused, a Memorandum of Understanding was entered between them on 14.02.2025 for which the accused returned Rs.25 lakhs through online transaction and issued post-dated cheques for the balance amount, but with an intention to deceive the balance amount, the accused gave stop payment and when the defacto complainant approached him and questioned about the same, he started to threaten the defacto complainant. Thus, based on the complaint, FIR was registered and the accused was arrested on 05.02.2026. However, contravening the provisions of the section 35 of BNSS, the learned Judicial Magistrate No.I, Poonamlllee rejected the requisition for remand.

7. In order to appreciate the facts and circumstances wherein the learned Judicial Magistrate No.I, Poonamallee passed the order of rejection of remand, the impugned order dated 07.10.2025 is reproduced hereunder:

“ As seen from the records, there is no allegation that the accused have not complied with section 35 BNSS Notice. So long as a person served notice under section 35(3) complies with it and appears, he cannot be arrested, as provided under section 35(3). In these circumstances, despite the offences alleged are punishable with less than 7 years imprisonment the guidelines in Arnesh Kumar Vs. State and Satyendar Kumar Antil is not complied in this case. Further, it is seen that grounds of arrest is not furnished. Therefore, it is seen that the Guidelines of Hon’ble Apex Court have not been complied in this case. In these circumstances, there is no prima savor satisfaction to remand the accused in this case. Hence, accused is set at liberty as per section 60 BNSS on execution of bond for Rs.25,000/- and to furnish two sureties for a like sum each immediately on the next working day ”

8. Before going into the merits of the order of the Judicial Magistrate , it is necessary to analyse whether the remand requisition made by the revision petitioner/ Investigating Officer is proper. It is admitted fact that the remand requisition was made for the offences u/s 406, 420 IPC

9. Section 35(1) BNSS empowers police officers to arrest without warrant in certain cases. However, Section 35(3) to (6) BNSS places a significant verification that when the offence is punishable with imprisonment up to seven years and in a non-cognizable case, arrest cannot be made mechanically. Police officers must record reasons showing necessity of arrest, and the Magistrate must scrutinize those reasons

before authorizing further detention. Since the above offence is punishable with imprisonment for upto 7 years, the notice u/s Section 35 of BNSS is directly applicable in this case. As far as the arrest of the accused in compliance to the provisions u/s 35 of BNSS is concerned, the Revision petitioner states that the investigating officer complied with statutory requirements and furnishing written grounds of arrest at the time of production before the learned Judicial Magistrate.

10. Section 35 of the BNSS provides for situations where a person may be arrested by a police officer, without a warrant. An arrest can be made only where the police officer forms a reason to believe under Section 35(1)(b)(i) of the BNSS that the accused has committed an offence, and further satisfies himself that custody is necessary under Section 35(1)(b)(ii) for at least one specified purpose, such as preventing the commission of further offences, facilitating a proper investigation, preventing tampering with evidence, protecting witnesses, or ensuring the accused's presence before the court. A valid arrest requires simultaneous compliance with Section 35(1)(b)(i) and the existence of at least one necessity condition under Section 35(1)(b)(ii). Moreover, even if the conditions under Section 35(1)(b) of BNSS are satisfied, there can't be a mandatory arrest, and police officer still may or may not decide to do so.

11. Section 35(3) of the BNSS, 2023, states that instead of arresting an accused, the officer may serve a notice on the accused for appearance. This provision applies to all cognizable offences. However, for offences punishable with imprisonment up to a period of 7 years, this provision will have to be read along with Section 35(1)(b) of the BNSS, 2023, and its proviso which mandates the furnishing of reasons, in writing, for both,

making an arrest and when there is no requirement to do so. So long as a person served notice under Section 35(3) complies with it and appears, he cannot be arrested, as provided under Section 35(5). The above provision makes it clear that a notice under Section 35(3) of the BNSS to an accused or any individual concerned, for an offence punishable with imprisonment up to 7 years, is the rule, while an arrest under Section 35(1)(b) of the BNSS, 2023, is a clear exception, wherein if the Investigating Officer is satisfied that such arrest is necessary to prevent further offence, for proper investigation, or to prevent tampering with evidence.

12. The impugned order disclose that so long as the person served notice u/s 35(3) complies with it and appears, he cannot be arrested as provided u/s 35(5) of BNSS. However, this observation is contradictory to the request for remand wherein the Investigating Officer sought for remand for the cognizable offence u/s 35(1)(b) of BNSS which requires that

“35. (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person.”

....(b) (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

- (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;***
- (ii) the police officer is satisfied that such arrest is necessary***
 - (a) to prevent such person from committing any further offence; or***
 - (b) for proper investigation of the offence;***
 - (c) or to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or***
 - (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or***
 - (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured***

On perusal of the remand report submitted by the Investigating officer seeking remand on 05.02.2026, it is stated that during the enquiry and investigation it was found that the accused had committed the offence of deceiving Rs.1 crore from the defacto complainant and also cheated many other persons and as such, the accused was arrested and requires remand and stated that since the absconding accused are to be arrested, and also documents are yet to be seized and also the amount allegedly received is to be recovered the remand is sought for by recording the reasons for the need of arrest and remand. Therefore, there is no impropriety in the arrest of the respondent/accused on 05.02.2026 u/s 35(1)(b) of BNSS by recording the reasons for the arrest and for remand.

13. Thus, the arrest of the accused by the Investigating Officer on 05.02.2026 for the reasons recorded in the Remand Report does not suffer any infirming in compliance to the provisions as contemplated u/s 35(1)(b) of BNSS. Thus, the observation made by the learned Judicial Magistrate No.I, Poonamallee as to the violation of the section 35(3) of BNSS is not sustainable and is not applicable in this case, whereas the Investigating Officer has arrested the accused based on the Investigation and recorded that he has the reason to believe on the basis of such complaint, information, or suspicion that the accused has committed the said offence.

14. As far as the observation made as to the complaint lodged by the accused before CCB, Chennai Police station is much prior to that of the defacto complainant, is concerned, the learned counsel for the respondent/accused has submitted that there are totally Rs.1,68,71,697/- has been transferred to the account of the defacto

complainant from the year 2020 till February 2025 which includes Salary. The said transaction would clearly show that the defacto complainant was working as Accountant and never received any amount from the defacto complainant. Further, to take revenge has confined the respondent and he was forced to transfer Rs.5 lakhs on 17.02.2025, Rs.20 lakhs on 28.02.2025 and also obtained blank cheque and also MoU. hence, the accused lodged the complaint on 29.05.2025 to the Commissioner of Police, Chennai which was transferred to Vanagaram Police station. Further, the accused filed a petition for direction to register a case on his complaint dated 28.05.2025 in CMP No.17358/2025 on the file of Metropolitan Magistrate for Exclusive Trial of CCB Cases relating to cheating cases, Egmore and the same was posted for counter on 13.02.2026. Further, upon the freezing of the bank account of the accused, he filed petition before the Hon'ble High court, Madras in CrI.O.P.4352/2026 to defreeze his account, which is also pending for counter of the petitioner. This is purely a money dispute between the accused and the defacto complainant which is civil in nature and in such circumstances, is no perversity in the rejection of remand by the Judicial Magistrate No.I, Poonamallee as on 05.02.2026. .

Admittedly, the CSR registered for the complaint of the defacto complainant was dated 21.04.2025 and the complaint was further forwarded to Avadi Commissioner on 09.07.2025. However, the complaint of the accused was lodged to the Commissioner of Police Chennai on 28.05.2025 which was subsequently closed on 09.10.2025. Thus, the findings of the learned Judicial Magistrate No.I, Poonamallee that the complaint of the accused is much prior to that of the defacto

complainant is not factually correct. Thus, this reason for rejection of remand is not sustainable.

16. In the above said circumstances and position of Law, the FIR and the remand requisition clearly makes a prima facie as to the respondent/accused towards cheating of about Rs.1,00,00,000/- by giving stop payment intentionally. Culminating the point, this Court finds that observation made by the Judicial Magistrate No.I, Poonamallee in the impugned remand rejection order that no proceedings initiated towards dishonour of cheque by stop payment instead of proceeded with criminal case is a premature observation with regard to the alleged prosecution case as against the respondent/accused. Thus, the rejection of remand with the observation on this point in the impugned order dated 05.02.2026 is liable to be set aside.

17. On perusal of the records, the remand report filed by the Inspector of Police clearly establishes prima facie case as against the respondent/accused for deceiving the defacto complainant by intentionally giving stop payment. Further, the respondent is the accused in respect of Crime No.569/2025 for a similar offence u/s 406, 420 IPC, registered in Kolathur Police station which was registered as on 15.07.2025 . This previous antecedents of the respondent/accused was also brought to the knowledge of the learned Judicial Magistrate by quoting the same as the accused has previously involved in similar offence, which was brought to the knowledge of the learned Judicial Magistrate even in the Remand Report by the Investigating Officer.

18. The learned counsel for the respondent argued that in criminal law, remand refers to the process by which an accused person, after arrest, is kept in custody under the orders of a Magistrate during the stage of investigation. It is a crucial stage because it directly affects the fundamental right to personal liberty under Article 21 of the Constitution. The Right to Life and Personal Liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India and any attempt to encroach upon this fundamental right has been frowned upon by the Hon'ble Apex Court. Therefore, the power of remand is not mechanical but must be exercised with judicial application of mind as held by the Hon'ble High Court, Madras in CrI.O.P.No.26888/2018 and crI.M.P. No.15519/2018 (State Vs Nakeeran Gopal), wherein the Hon'ble High court, confirmed the remand rejection by the order of XIII Metropolitan Magistrate dated 09.10.2018 and also relied on the authority of Hon'ble Apex Court reported **in 2025 INSC 162 (Vihaan Kumar Vs. State of Haryana)**, wherein Hon'ble Apex Court reiterated the necessity to uphold the rights conferred under Article 22(2) of the Constitution. He further argued that, the remand requisition was given only on the complaint without any material evidence and the previous antecedents are also not a ground for detaining the accused in any case, hence, the remand rejection in the impugned order is a clear establishment of Law and at the discretion the learned Judicial Magistrate No.I, Poonamallee .

19. Though, learned counsel for the accused also submitted that the Magistrate needs to determine if the confession and recovery were voluntary or

fabricated by the police, on perusal of the records, the remand requisition shows that it is annexed with witness statements , seizure mahazar and confession of the accused were produced as on the date of requisition for remand. Totally statement of witness/defacto complainant were produced along with remand requisition. On perusal of the remand requisition which was given by the Inspector of Police shows the prima facie cheating of money and based on the confession, mobile phone and other documents were seized. The remand requisition contains the ingredients for remand whereas, the remand rejection order does not disclose recording that there are no reasonable grounds to believe the accused is not involved in an offence. Further, the accused is having a previous case of similar offence even as on the date of remand which is pointed out by the Investigating Officer. Though the previous antecedents are not a ground for remand, it is a reason and a reasonable ground to believe that the accused has involved in the offence in the presence of prima facie ingredients. All these circumstances clearly constitute clear prima facie for remand.

20. The observation of the Judicial Magistrate that no proceedings initiated towards dishonour of the cheque by stop payment is perverse to the existence of prima facie case of cheating. Having given careful consideration to the Order passed by the learned Judicial Magistrate No.I, Poonamallee on 05.02.2026, this Court finds that the impugned Order rejecting the claim of remand in respect of the respondent herein seems to be non-sustainable in view of the offences alleged.

21. Thus, in view of the discussions supra, the remand rejection based on the ground that the offences u/s 406, 420 IPC that there is no prima faice for remand and for other reasons stated above, has to be set aside. Accordingly, this revision deserves to be allowed.

In the result, this Criminal Revision is allowed. The order passed by the Judicial Magistrate No.I, Poonamallee dated 05.02.2026 in Crime No.10/2026 on the file of Central Crime Branch, EDF-I, Avadi Police station rejecting the remand of the respondent/accused is hereby set aside.

Dictated by me to the Steno-typist, transcribed and computerized by him, corrected and pronounced by me in the open court on the 11th day of March, 2026

**PRINCIPAL SESSIONS JUDGE,
TIRUVALLUR**

Petitioner & Respondent side Witnesses and exhibits : NIL

**PRINCIPAL SESSIONS JUDGE,
TIRUVALLUR**