

**III ADDITIONAL DISTRICT & SESSIONS COURT  
TIRUVALLUR at POONAMALLEE**

Present: **Thiru. C.VIJAYAKUMAR, B.A., B.L.**  
III Additional District and Sessions Judge

**Tuesday, the 7<sup>th</sup> day of April 2026**

**Crl.M.P.No.05/2026**

**in**

**S.C.No. 23/2021**

- 1) Lal @ Prakash S/o. Kumar,
- 2) Akash Kumar, S/o. Gopi,
- 3) Kathavarayan, S/o. Ayyanar,
- 4) Gullu @ Gunasekara Pandiyan,  
S/o. Sundaram.
- 5) Senthil Kumar @ Senthil, S/o. Paramasivam,

....Petitioners / Accused-1 to 5

//Vs//

State Represented by,  
The Inspector of Police,  
T-5 Thiruverkadu P.S,  
Cr.No.909/2020,  
U/s. 147, 148, 341, 302 r/w 149 of IPC.

....Respondent / Complainant

This petition came up before this court for final hearing on 20.01.2026 in the presence of M/s. D. Rajakumar, M. Rajendran, J. Varunkumar learned counsels for the Petitioners / Accused-1 to 5, and Mr. S. Balamurugan, Additional Public Prosecutor learned counsel for the Respondent / Complainant and upon hearing the both sides and on perusal of oral and

documentary evidence, having stood over for consideration till this day, this court passed the following:

### **ORDER**

The Petitioners / Accused-1 to 5 filed this petition under section 311 of Cr.P.C prayed to recall the PW16 for cross examination.

#### **2) The crux of the petition filed by the Petitioner/ Accused are as follows:-**

The Petitioners herein are the accused persons in the above case who had filed this petition stated that, the petitioners were alleged for the offences 147, 148, 341, 302 r/w 149 of IPC. After the framing of charges, this case was pending before this court for examination of witnessess. Further, it is stated that, the PW16 was examined in chief as well as cross. During the examination of the PW16, the counsel for the accused engaged in some other work. To establish their case, it is necessary to cross examine the PW16. Therefore the petitioners filed this petition and prayed to recall the PW16, for the purpose of cross examination. Hence, the Petition.

#### **3) The crux of the Counter filed by the Respondent / Complainant are as follows:-**

Per contra, the Respondent/Complainant contended that the petition to recall PW-16 for further cross-examination was frivolous and lacked sustainable

grounds. They stated that PW-16, an ocular witness, had been properly summoned and examined in the presence of all parties on 27.11.2024. At that time, the defense counsel specifically confirmed they would cross-examine the witness on behalf of all accused (A-1 to A-5), and the court subsequently recorded that the cross-examination was completed in full. The Respondent argued that the Petitioners' current claim that their counsel was busy in another court was an improper and mala fide justification intended only to delay the trial, which had already been dragged on for five years. The Respondent further maintained that allowing the recall would lead to the tampering of a vital witness and constitute an abuse of the judicial process. Citing the landmark judgment in *Vinod Kumar v. State of Punjab*, the Respondent highlighted that the Supreme Court had condemned such vexatious tactics and emphasized the court's duty to complete cross-examinations on the same day to protect both the accused's interests and the collective interests of society. Finally, they noted the court's prior observations regarding the "ailment" of frequent adjournments and the necessity of preventing the legal machinery from being used as a tool for oppression and delay. Hence, this petition is liable to be dismissed.

**4) Now the point arising for consideration is whether the petition has to be allowed or not?**

5) The accused present petitioners are faced trial before this court for the charges framed against them 147,148,341,302 r/w 149 IPC. After framing of charges this court ordered for prosecution side witnesses and on the side of the prosecution PW1 to PW16 were examined and 17 documents were marked as Ex.P.1 to Ex.P.17 . Now the case is posted for examination of the witness LW22 (Investigation Officer). In the mean time, the Petitioners, filed the present application u/s. 311 of Cr.P.C to cross examine the PW16.

6) On 27.11.2025, the eye witness namely Sadam Usain @ Ashwin has examined as PW16 and on the same day he was cross examined by the counsel for the petitioners/Accused 1 to 5. It is the contention of the petitioners/Accused that, the counsel for the accused left some questions to the witness and seeking recall of the witness PW16. The section 311 crpc reads as follows :

**311. Power to summon material witness, or examine person present.—**

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

As per the above definition, when the evidence of any witness is essential to the just decision of the case, the court will recall the witness as sought by the

petitioners. In the present case on 27.11.2025 the Pw16 was examined in chief and cross in full by the learned defence counsel .In the case reported in **Rajaram Prasad Yadav Vs. State of Bihar, AIR 2013 SC 3081(para 23)**, the Hon'ble Supreme Court has laid down following guidelines and governing principles for exercising powers u/s 311 CrPC to summon, recall or re-examine any person as witness :

**Para 23.** From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- 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 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.

7) When this court applied the above guidelines in the present case, guideline Nos. e and g are related to the facts of this petition. The petitioners have to establish that the recall of the witness is necessary for the just decision of this case. The petition averments show that the defence counsel left some questions, and hence seeking recall of witness PW16 is not an acceptable reason under the spirit of Section 311 CrPC. And the reason stated in the petition does not disclose any acceptable reason for the recall of witness.

**8)** In result, this petition is dismissed.

Dictated to the Steno-typist directly, typed by him in the computer, corrected and pronounced by me in the open court, this the 7<sup>th</sup> day of April 2026.

**III Additional District and Sessions Judge,  
Tiruvallur at Poonamallee.**