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Judicial Magistrate Court, Shencottah

Presiding Officer: Tr. S.Ilayaraja, M.L.

Judicial Magistrate, Shencottah

Dated on this the 12th day of May 2026

C.N.R. No. TNTS120001672014

M.P.No.33 of 2026

in

C.C. No.126/2014

State Rep by

Inspector of Police,

AWPS, Tenkasi.

....Petitioner/Complainant

/Vs/

Chinnadurai @ Sivakumar and 4 others

....Respondents/Accused's

This petition came up for final hearing before this Court, Additional Public Prosecutor Grade II of the petitioner, and Advocate Mr. V.Athibalasubramanian, appeared on behalf of the respondents. After hearing both sides and perusal of the documents submitted with the petition, this Court delivers the following orders....

Orders

This petition has been filed under Section 348 BNSS seeking permission to examine Rajamanickam, Stephen Xavier Gnanam and Inspector Kaliswari.

2. Brief of the petition.

The Main case is pending on the file of this Court and the same has been posted for arguments. A supplementary charge sheet has been filed and the prosecution witnesses namely Thangam, Valliyammal, Manikandan and Saroja were already examined earlier. The



evidence of the above said witnesses requires recall and further examination for the just decision of the case. The following material witnesses are yet to be examined on the side of the prosecution :

Rajamanickam, working at Arulmigu Kalyana Murugan Temple, Maraimalai nagar, Chengalpattu.

Stephen Xavier Gnanam, working at Yanam Marava Middle School, Kadayam.

Inspector of Police, Kaleeswari, All Women Police Station, Tenkasi.

Due to inadvertence and oversight, the above witnesses were not examined earlier and the already examined witnesses were not fully examined.

Without examining and recalling the above said material witnesses, the case has been posted for arguments, which may cause serious prejudice to the prosecution.

It is therefore just and necessary that this Court may be pleased to reopen the case, recall the witnesses namely Thangam, Valliyammal, Manikandan and Saroja for further examination and also permit the petitioner to examine Rajamanickam, Stephen Xavier Gnanam and Inspector Kaliswari. Hence, this petition is allowed.

3. Brief of the counter

The respondents denied all the allegation made in the petition. The present petition filed by the prosecution under section 311 Cr.P.C. is wholly misconceived, legally untenable, and a gross abuse of the process of law. The same has been filed with an ulterior motive to protract the proceedings and harass the accused, in a case which is pending since 2014 (nearly 12 years old).



The trial in the above case was fully completed and the matter was posted for arguments. At that stage, the prosecution, instead of arguing and allowing the defence side to argue filed an additional charge sheet on 04.04.2025. After filing the additional charge sheet/final report this Court from 12.08.2025 to 22.10.2025 granted more than 10 adjournments for the prosecution to let in further evidence. Despite such extraordinary indulgence, the prosecution failed to examine any witness or produce any material evidence. Hence this Court closed the prosecution and posted the case for questioning under 351(1)(b) of BNSS.

Thereafter, the accuseds were examined under section 351(1)(b) of BNSS. The matter was posted for arguments and more than 15 adjournments were granted. The accuseds side has already advanced arguments in full. The case now stands at the final stage of prosecution arguments.

At this highly belated stage, the prosecution has filed the present petition seeking recall/reopening of witnesses. There was no valid reason is assigned, no explanation for earlier inaction, no disclosure of what new evidence is sought to be elicited and there is no demonstration that such recall is essential for just decision of the case.

It is settled law that Section 311 CrPC is not intended to fill up lacunae in the prosecution case. It cannot be invoked after closure of evidence and arguments, except in rarest circumstances. The power must be exercised judiciously, not arbitrarily, and only when absolutely necessary. The present petition is nothing but an attempt to rectify inherent defects in the prosecution case, a strategy to overcome weaknesses exposed during trial and arguments, and a deliberate move to restart the trial process after failing to prove the case.

Allowing this petition would cause serious and irreparable prejudice to the accused. The accused have faced trial for over a decade. They have already undergone the entire



rigour of trial. Reopening the case at this stage would violate their right to fair and speedy trial. The conduct of the prosecution clearly shows, lack of dilligence, intentional delay and harassment of the accused by prolonging litigation endlessly. Once the case has reached the stage of final arguments, reopening the prosecution evidence, defeats the principle of finality, undermines judicial discipline and encourages procedural abuse. Hence this petition is dismissed with cost.

Point for determination

1. Whether this petition is allowed or not?

4. Both side heard and documents perused.

5. This case arises out of matrimonial disputes between the complainant and the 1st accused after their marriage. The complainant lodged a complaint before the All Women Police Station, Tenkasi, against Accused Nos. 1 to 5, based on which a case was registered under Sections 498A, 294(b), 494, 506(i) read with Section 109 IPC and Section 4 of the Dowry Prohibition Act. The case was taken on file by this Court in C.C. No.126/2014, witnesses were examined, and the matter has been pending for trial.

6. During the course of trial, it came to light, based on the disclosure made by Accused Nos. 3 to 5, that Accused Nos. 1 and 2 had married each other and are living together as husband and wife. Consequently, the prosecution has filed an additional final report. Therefore, the present petition has been filed by the prosecution seeking recall of the case for the purpose of examining witnesses regarding the second marriage allegedly solemnized between Accused Nos. 1 and 2.

7. On the other hand, the accused objected to the petition contending that the case has been pending for more than 10 years, witnesses have already been examined, and the matter has been posted for arguments, and that the present petition has been filed only to prolong the proceedings further.



8. Upon consideration of the submissions made on both sides, this Court finds that the marriage between the complainant and the 1st accused is subsisting and valid. At the same time, it has also come to light that a marriage was conducted between Accused Nos. 1 and 2. Hence, Rajamanickam, who allegedly solemnized the second marriage of Accused Nos. 1 and 2 at Murugan Temple at Maraimalai Nagar. Then Mr. Stepen Xavier Gnanam, Teacher of Yanam Marava Middle School, Kadayam, where the child born to Accused Nos. 1 and 2 is studying, and the Inspector of Police, All Women Police Station, Tenkasi, who filed the additional final report, those are material witnesses. Therefore, this Court is of the view that only upon examination of the above witnesses can it arrive at a proper conclusion regarding the offence under Section 494 IPC in this case. Accordingly, in the interest of justice, this petition deserves to be allowed.

Condition:

It is ordered that the witnesses namely Rajamanickam, Mr. Stepen Xavier Gnanam and the Inspector of Police, All Women Police Station, Tenkasi, shall appear before this Court either physically or through video conference on the same day, and their examination shall be completed on that day itself.

(Sd/-Tr.S.Ilayaraja)
Judicial Magistrate,
Shencottah.