

**BEFORE THE SESSIONS DIVISION OF VELLORE
DISTRICT/SPECIAL COURT FOR PREVENTION OF
CORRUPTION ACT**

Present: Thiru.M.Elavarasan,
Principal Sessions Judge/Special Judge, Vellore

Saturday, the 07th day of March, 2026

CrI.M.P.No. 436 of 2026

in

Spl.C.C.No.18 of 2025

CNR.NO.TNVL01-000695-2026

State, rep. by
Inspector of Police
Vigilance and Anti-corruption
Vellore
Tamil Nadu
Cr.No. 7 of 2013

. . . Petitioner /Complainant

-vs-

1. A. Shamshat,

2. A.Ayubali

. . . Respondent/Accused

This petition was coming before me on 25.02.2026 for hearing in the presence of Thiru.S. Ramesh Kumar, the learned Special Public Prosecutor for the petitioner/complainant and of Mr. V.Krishnamoorthy, learned counsel for the respondent/accused, upon hearing both sides and, upon perusing the entire case records and, this court deliver the following:-

O R D E R

This petition has been filed by the prosecution under Section 311 Cr.P.C. (Section 348 BNSS) r/w Section 154 of the Indian Evidence Act (Section 157 of Bharatiya Sakshya Adhinyam) seeking to recall PW-3 Logesh and permit the prosecution to treat the witness as hostile and to cross-examine him.

2. Brief reason stated in the petition is as that PW-3 is an accompany / material witness in this case. He was examined in chief on 07.01.2019 and was later cross-examined by the defence on 19.11.2025. During his deposition before the Court, PW-3 did not fully support the prosecution case and gave answers inconsistent with the earlier statement said to have been given to the police under Section 161 Cr.P.C. particularly regarding the demand and acceptance of illegal gratification. The evidence of PW-3 is vital for the just decision of the case and therefore it is necessary to recall him and confront him with his earlier statements. Hence the prosecution seeks permission to treat PW-3 as hostile and to cross-examine. There is no prejudice would be caused to the accused as they will have an opportunity to further cross-examine the witness. Hence the petition.

3. Brief counter of the respondent is as that the respondent/accused has filed a counter opposing the petition contending that the petition is not maintainable either in law or on facts. PW-3 was examined in chief on 07.01.2019, but at that time the prosecution did not seek permission to treat him as hostile. The witness was subsequently cross-examined by the defence on 19.11.2025, and even on that day the prosecution did not seek such permission. The prosecution evidence was closed on 06.01.2026 and the case was posted for questioning the accused under Section 313 Cr.P.C.. At that stage, after several years, the prosecution has filed the present petition only to fill up the lacuna in the prosecution case. The chief-examination of PW-3 did not show any hostility warranting such permission and that allowing the petition would cause serious prejudice to the accused. Hence the petition is liable to be dismissed.

4. Heard both sides. Perused the material records. Considered the submission raised by the both sides.

5. The point for consideration is as to whether the petition to recall PW-3 Lokesh and to cross-examine him is to be allowed or not?

6. This petition has been filed by the prosecution Section 311 Cr.P.C. (Section 348 BNSS) r/w Section 154 of the Indian Evidence Act (Section 157 of Bharatiya Sakshya Adhiniyam) seeking to recall PW-3 Lokesh and permit the prosecution to treat the witness as hostile and to cross-examine him.

7. The case of the prosecution is that PW-3 is an accompany / material witness in this case. He was examined in chief on 07.01.2019 and was later cross-examined by the defence on 19.11.2025. During his deposition before the Court, PW-3 did not fully support the prosecution case and gave answers inconsistent with the earlier statement said to have been given to the police under Section 161 Cr.P.C. particularly regarding the demand and acceptance of illegal gratification. Further the evidence of PW-3 is vital for the just decision of the case and therefore it is necessary to recall him and confront him with his earlier statements.

8. On the other hand, the learned counsel appearing for the accused contending that PW-3 was examined in chief on 07.01.2019 and cross-examined by the defence on 19.11.2025 and that the prosecution had not sought permission to treat the witness as hostile at the relevant time. It is

further contended that the prosecution evidence was closed and the case was posted for questioning the accused under Section 313 Cr.P.C., and therefore the present petition filed at a belated stage is only to fill up the lacuna in the prosecution case.

9. Perusal of records would go to show that the occurrence held in the year 2013 and Final Report was filed against the petitioner / accused in the year 2014 before the Special Court and taken on file as Spl.C.C.No.08/2014. Trial has been commenced in the year 2016 and PW3 was examined in chief on 07.01.2019 in chief before the Chief Judicial Magistrate, Vellore and cross-examined by the defence on 19.11.2025. PW3 is said to be an accompany / material witness in the trap proceedings to speak about the demand and acceptance of illegal gratification.

10. The power conferred on the Court under Section 311 Cr.P.C. (Section 348 BNSS) is very wide and enables the Court to summon or recall any witness at any stage of the trial if the evidence of such witness appears to be essential for the just decision of the case. The object of the said provision is to discover the truth and to render a just decision.

11. The *Hon'ble Supreme Court in Sat Paul v. Delhi Administration, Rajaram Prasad Yadav v. State of Bihar, and Zahira Habibullah Sheikh v. State of Gujarat* has held that the Court has wide powers to recall witnesses and permit cross-examination of its own witness whenever such course is necessary to arrive at the truth and to secure the ends of justice.

12. In the present case, PW-3 is stated to be a material witness and the prosecution seeks to confront the witness with his earlier statements. Merely because the petition is filed at a later stage, the same cannot be rejected if the evidence sought to be elicited appears necessary for the just decision of the case.

13. This Court is of the considered view that recalling PW-3 and permitting the prosecution to cross-examine the witness is necessary to arrive a just conclusion. In view of the above, this Court finds sufficient grounds to allow the petition.

14. In the result:-

- (i). The petition is allowed;
- (ii). Office is directed to issue summon to the PW3 Lokesh for his appearance on 24.03.2026.

Dictated to the Steno-typist, directly typed by him in computer corrected and pronounced by me in the Open Court, on this the 07th day of March 2026.

Principal Sessions Judge
Vellore District