BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.02.2026

PRONOUNCED ON : 01.06.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.1327 of 2026
and
Crl.M.P.(MD)Nos.1406 and 1407 of 2026

Anbu

... Petitioner/Accused

Vs.

The State of Tamilnadu,
Rep by. the Inspector of Police,
Kumbakonam Taluk Police Station,
Thanjavur District.
Crime No.991 of 2021

.... Respondent / Complainant

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to Call for the records and Set aside the order dated 09.09.2025 passed in Crl MP No.01 of 2025 in SC No.187 of 2022 on the file of the learned Additional District and Sessions Judge, FTC, Kumbakonam, Thanjavur District.

For Petitioners : Mr.P.Karthikeyan

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor

ORDER

Prologue:

The present Criminal Original Petition brings before this Court a recurring yet sensitive question touching the balance between the Court's duty to discover truth and the accused's indefeasible right to a fair and speedy trial. The petitioner, who is facing trial for the grave offence under Section 302 IPC in S.C.No.187 of 2022, calls in question the order of the learned Additional District and Sessions Judge, Fast Track Court, Kumbakonam, dated 09.09.2025, whereby the prosecution was permitted to recall PW14, the Investigating Officer, under Section 348 of BNSS, 2023, corresponding to Section 311 Cr.P.C.

2. The petitioner contends that the impugned order is not an order passed in aid of justice, but one which enables the prosecution to repair the defects in its case after the defence had exposed the lacunae during trial. The prosecution, on the other hand, would submit that the documents sought to be marked through PW-14 are

vital links in a case resting on circumstantial evidence and that the order is only intended to enable the Court to arrive at a just decision.

3. Thus, the issue before this Court is not whether Section 348 BNSS confers wide powers upon the Trial Court. Undoubtedly it does. The real question is whether, in the facts of the present case, such power has been exercised upon proper judicial satisfaction, supported by strong and valid reasons, and whether the evidence sought to be introduced is truly essential to the just decision of the case or merely an attempt to fill up the lacunae in the prosecution case.

Case of the prosecution:

4. The prosecution case, in brief, is that the deceased Venkatesan was working as Regional Manager in a company known as UNILINK Company, while PW-1 Rajaram was working as Direct Sales Officer in the said company. The petitioner / accused Anbu was also associated with the same company and was known to the deceased. According to the prosecution, the deceased had entrusted

agricultural products worth Rs.14,00,000/- to the petitioner / accused for sale. The allegation is that the accused sold the said products but failed to remit the sale proceeds to the company. Therefore, on 23.09.2021, the deceased Venkatesan, along with PW-1 to PW-3, is said to have met the accused and demanded either return of the products or payment of the money.

5. It is further alleged that the accused sought two days time. Thereafter, according to the prosecution, the accused took the deceased alone in his car. The prosecution would further allege that the deceased contacted PW-1 over phone, stated that he was with the accused, asked for money for consumption of liquor, and that PW-1 sent Rs.1,000/- and thereafter Rs.500/- through PhonePe. It is also alleged that the deceased and PW-1 shared their respective locations.

6. The prosecution case is that the accused, with the intention of eliminating the deceased, caused his death by attacking him with a billhook and thereafter abandoned the body in water. On

completion of investigation, final report came to be filed against the petitioner for the offence under Section 302 IPC.

7. During trial, the prosecution examined PW-1 to PW-14. PW-14 is the Investigating Officer. He was examined and cross-examined on 25.11.2024. Thereafter, the accused was also questioned under Section 313 Cr.P.C. / under Sec. 351 BNSS. The case had progressed substantially and, according to the petitioner, had reached the stage of defence evidence and arguments.

8. At that stage, the prosecution filed Crl.M.P.No.01 of 2025 under Section 348 BNSS seeking recall of PW-14 for further examination and for marking certain documents, namely Call Detail Records, tower location details, IMEI details, SIM address particulars, bank account details and transaction details relating to the deceased, the accused, PW-1 and UNILINK Company.

9. The learned Trial Judge, by order dated 09.09.2025, allowed the said petition, holding that the documents were necessary to

complete the chain of circumstances and that without those documents, arriving at a final conclusion would be difficult. Challenging the said order, the present Criminal Original Petition has been filed.

Grounds raised by the petitioner:

10. The principal ground raised by the petitioner is that the impugned order is mechanical, cryptic and bereft of reasons. It is contended that the learned Trial Judge has merely extracted the prosecution version and Section 348 BNSS and thereafter concluded, without adequate analysis, that the documents are essential. The petitioner further contends that PW-14 had already been examined and cross-examined. During cross-examination, facts favourable to the defence had been elicited. The prosecution, after realising the effect of such cross-examination and after the defence pointed out the lacunae in the prosecution case, has filed the recall petition only to fill up the gaps.

11. It is also contended that the documents sought to be introduced, even if accepted at their face value, would not establish

the offence of murder. At the highest, they may indicate alleged money transactions or may lend some support to the prosecution's last seen theory. But such documents, according to the petitioner, cannot establish the essential ingredients of Section 302 IPC.

12. The petitioner would further submit that the prosecution has failed to recover and prove the weapon allegedly used in the commission of the offence and has failed to establish the complete chain of circumstances. In such circumstances, permitting the prosecution to introduce additional documents at the fag end of the trial would seriously prejudice the defence.

13. The petitioner places reliance upon the decisions of the Hon'ble Supreme Court in ***State of NCT of Delhi v. Shiv Kumar Yadav***[1], ***Rajaram Prasad Yadav v. State of Bihar***[2], ***Natasha Singh v. CBI***[3], ***Umar Mohammad v. State of Rajasthan***[4] and ***Union Territory of Dadra and Nagar Haveli v. Fatehsinh***

1 (2016) 2 SCC 402
2 2013 (14) SCC 461
3 (2013) 2 SCC 402
4 2017 (14) SCC 711

Mohansinh Chauhan[5], to contend that recall under Section 311 Cr.P.C. / Section 348 BNSS cannot be permitted as a matter of course and cannot be used as a device to fill up lacunae.

Submissions on either side:

14. The learned counsel appearing for the petitioner submitted that the learned Trial Court failed to apply the test of essentiality. He would submit that the prosecution examined as many as fourteen witnesses, closed its evidence, and PW-14, the Investigating Officer, had already been subjected to full cross-examination.

15. According to the learned counsel, the recall petition was filed only after the defence demonstrated that the prosecution had failed to produce certain documents. The prosecution, having failed to prove its case in accordance with law, cannot be allowed to reopen the trial by recalling the Investigating Officer.

5 2006 (7) SCC 529

16. The learned counsel would further submit that the documents now sought to be marked are not indispensable for deciding the charge of murder. The CDR and tower location records may, at best, show the location of the accused or the deceased or the fact that calls were exchanged. The bank statements may, at best, suggest a monetary dispute. Neither of them, by themselves, can establish that the petitioner committed murder.

17. It was further argued that the learned Trial Judge has not recorded any finding as to how the documents sought to be produced would complete the chain of circumstances. Merely stating that the case is one of circumstantial evidence and that the documents are necessary is not sufficient compliance with the mandate of Section 348 BNSS.

18. The learned counsel also emphasised that fair trial under Article 21 includes the right of the accused not to be subjected to prolonged and unfair prosecution tactics. The prosecution cannot be

permitted to improve its case after the accused has exposed its weakness during cross-examination.

19. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent State submitted that the impugned order does not suffer from any illegality. It is contended that Section 348 BNSS confers very wide power upon the Court to summon or recall any witness at any stage of the trial if such evidence appears essential to the just decision of the case.

20. The learned Government Advocate submitted that the present case is based on circumstantial evidence. Therefore, every link in the chain assumes significance. The CDR, tower location, SIM address particulars and bank transaction details are material for establishing motive, last seen circumstance and the movement of the accused and the deceased. It is further submitted that the omission to mark these documents earlier was only an inadvertent lapse and cannot be treated as an irreparable lacuna. The criminal Court is not

expected to merely count the errors committed by the prosecution or the defence, but is duty-bound to discover the truth.

21. The learned Government Advocate would submit that the learned Trial Court has correctly held that the documents are essential for arriving at a just decision. It is further argued that the petitioner would have the opportunity to cross-examine PW-14 after recall and, therefore, no prejudice would be caused to him.

22. Heard the learned counsels on either side and carefully perused the materials available on record.

Point for consideration:

23. In the light of the rival submissions, the following point arises for consideration:

"Whether the order dated 09.09.2025 passed in Crl.M.P.No.01 of 2025 in S.C.No.187 of 2022, allowing the prosecution to recall PW-14 / Investigating Officer under Section 348 BNSS for marking

CDR, tower location details, SIM particulars and bank transaction records, is legally sustainable?"

Governing legal principles:

24. Section 348 BNSS, 2023, corresponding to Section 311 Cr.P.C., reads as follows:

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

25. The provision has two parts. The first part is discretionary. The second part is mandatory. If the Court forms an opinion that the evidence of a person is essential to the just decision of the case, the Court is bound to summon, examine, recall or re-examine such person. However, the width of the power does not dilute the discipline governing its exercise. The power is intended to aid the

cause of justice. It is not intended to confer an unfair advantage on either party. It cannot be used to change the nature of the case, to cause prejudice to the accused, to permit a disguised retrial, or to fill up inherent lacunae in the prosecution case.

26. In ***Rajaram Prasad Yadav v. State of Bihar***[6], the Hon'ble Supreme Court has laid down that the Court must satisfy itself that the evidence sought to be adduced is essential for the just decision of the case. The additional evidence must be germane to the issue and the power must be exercised with care, caution and circumspection.

27. In ***State of NCT of Delhi v. Shiv Kumar Yadav***[7], the Hon'ble Supreme Court held that a mere observation that recall is necessary for ensuring fair trial is not enough. Tangible reasons must be recorded to show how the fair trial would suffer without such recall.

6 2013 (14) SCC 461
7 (2016) 2 SCC 402

28. In ***Natasha Singh v. CBI***[8], the Hon'ble Supreme Court reiterated that the power under Section 311 Cr.P.C. must not be exercised to fill up a lacuna in the case of the prosecution or defence, or to cause serious prejudice to the accused, or to give unfair advantage to the opposite party.

29. The distinction between an "oversight" and a "lacuna" is indeed important. An inadvertent omission to bring on record a material document may, in appropriate cases, be corrected. But where the prosecution, after closure of evidence and after the defence has elicited favourable answers, seeks to introduce materials to strengthen a weak link, the Court must be doubly cautious.

Analysis:

30. The impugned order shows that the learned Trial Judge has recorded the prosecution case, the objection of the accused, the text of Section 348 BNSS and thereafter concluded that the documents sought to be produced are essential to link the chain of

8 (2013) 2 SCC 402

circumstances. The learned Trial Judge has observed that the case rests mainly on circumstantial evidence and that there is no eyewitness. The learned Trial Judge has further observed that PW1 to PW3 had spoken about the deceased and the accused being together and about the PhonePe transactions and sharing of locations.

31. However, the difficulty with the impugned order lies not in the conclusion alone, but in the absence of adequate reasoning leading to such conclusion. The Trial Court was required to examine whether each category of document sought to be introduced was indispensable for the just decision of the case. The documents sought to be introduced are broadly of two categories. The first category consists of CDR, SDR, IMEI, tower location and SIM address particulars. The second category consists of bank account and transaction details relating to the accused, the deceased, PW1 and UNILINK Company.

32. As far as the first category is concerned, the prosecution seeks to use the same to support the last seen circumstance and the alleged movement or location of the accused and the deceased. But the prosecution witnesses PW-1 to PW-3 have already spoken about the meeting between the accused and the deceased and about the accused taking the deceased in his car. The alleged phone calls and sharing of location are also matters spoken to by PW-1.

33. Therefore, the CDR and tower location details may be corroborative in nature. But the Trial Court has not explained how such corroborative material, sought to be introduced after closure of prosecution evidence and after examination of the accused, is so indispensable that without it the Court cannot render a just decision.

34. In a case based on circumstantial evidence, every circumstance must be proved and all circumstances must form a complete chain pointing only to the guilt of the accused. However, the mere fact that a case is based on circumstantial evidence does

not automatically justify recall of the Investigating Officer at any stage. The Court must still apply the test of essentiality.

35. As far as the second category of documents is concerned, namely bank account details and transaction records, the prosecution seeks to establish motive based on alleged monetary dealings and non-payment of the value of agricultural products. Motive, though relevant in a case of circumstantial evidence, cannot by itself prove the offence of murder.

36. Even if the bank records disclose monetary transactions or a business dispute between the parties, such material would, at the highest, support the allegation of motive. The Trial Court has not recorded how the said bank records would directly connect the petitioner to the act of murder. It is well settled that motive and last seen circumstance, unless supported by other incriminating circumstances forming a complete chain, cannot by themselves sustain a conviction for murder. Therefore, while such documents

may be relevant in a broad sense, the question under Section 348 BNSS is not mere relevance. The question is essentiality.

37. The expression "essential to the just decision of the case" carries a higher threshold than mere usefulness. Every useful document is not essential. Every document which may improve the prosecution case cannot be permitted to be introduced after the prosecution has closed its evidence.

38. The Trial Court has observed that "only if these documents are marked through the Investigating Officer, the chain of circumstances will be closed." This observation, in the considered view of this Court, is precisely the area which required deeper scrutiny. The Trial Court ought to have indicated which link was missing, how the proposed documents would supply that link, and why such link could not have been proved earlier despite due diligence.

39. The prosecution petition itself states that the omission occurred because the CDR and related materials were not marked earlier. The prosecution had full opportunity to examine PW-14 and mark all documents forming part of the investigation. PW-14 was examined and cross-examined. The accused was also questioned on the incriminating circumstances.

40. The filing of the recall petition after such substantial progress of trial places the accused in a position of serious prejudice. The accused had conducted his defence on the basis of the evidence already let in. If the prosecution is permitted to introduce further materials after the defence has exposed the omissions, the balance of a fair trial would be disturbed.

41. This Court is conscious that the power under Section 348 BNSS may be exercised “at any stage”. The phrase “at any stage” does not mean “at any stage without reasons”. The later the stage, the stronger must be the reasons. When recall is sought after closure of prosecution evidence, after cross-examination of the Investigating

Officer and after examination of the accused, the Court must insist upon a higher degree of judicial satisfaction.

42. The prosecution submitted that the omission was only an inadvertent mistake and not a lacuna. This argument cannot be accepted in the facts of the present case without careful qualification. A bona fide inadvertent omission may be corrected where the material was already part of the record and where no prejudice would be caused. But where the omission relates to documents now sought to be introduced to strengthen the chain of circumstances in a murder trial, after the defence has pointed out the weakness, the Court must be circumspect.

43. The learned Trial Judge has not discussed whether the documents were supplied to the accused earlier, whether they formed part of the final report, whether they were relied upon documents, whether the defence had notice of them, and whether recalling PW-14 would necessitate further questioning of the

accused. These are not empty procedural concerns. They go to the root of fair trial.

44. It is also relevant to note that the prosecution did not seek recall for clarifying any ambiguity in PW-14's evidence. The recall is sought for introducing documents which had not been marked earlier. The purpose is not merely to clarify; it is to supplement the prosecution evidence.

45. The impugned order does not demonstrate independent judicial analysis on whether the proposed documents are essential for deciding the culpability of the petitioner under Section 302 IPC. It merely records that the documents are vital and material. A conclusion cannot substitute reasons. The right of the accused to a fair trial is not an ornamental principle. It is a substantive guarantee under Article 21 of the Constitution of India. Fair trial includes fair opportunity to the prosecution, the victim and the accused. However, fairness cannot be understood as an unlimited opportunity to the

prosecution to repair its case after the defence has exposed its weaknesses.

46. At the same time, this Court is not laying down that recall of an Investigating Officer can never be permitted after closure of prosecution evidence. Each case must turn on its own facts. Where the evidence is truly essential and where denial of recall would result in failure of justice, the Court must exercise the power. But such power must be exercised upon recorded reasons, not upon general observations.

47. In the present case, the learned Trial Court has not applied the test of essentiality in its proper legal sense. It has not examined the nature of the documents, their indispensability, their effect on the charge under Section 302 IPC, the prejudice to the accused, the stage of the trial and the reason for non-production at the earlier stage.

48. The learned Trial Court has further failed to balance the right of the prosecution to place relevant material against the right of the accused to a fair and speedy trial. The impugned order, therefore, suffers from non-application of mind and is legally unsustainable.

49. This Court is of the considered view that permitting the prosecution to recall PW-14 at this stage, on the basis of the reasons recorded in the impugned order, would amount to allowing the prosecution to fill up the lacunae in its case. Such a course would cause serious prejudice to the petitioner / accused.

50. In view of the foregoing discussion, this Court holds that the order dated 09.09.2025 passed in Crl.M.P.No.01 of 2025 in S.C.No.187 of 2022 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Kumbakonam, Thanjavur District, cannot be sustained in law.

51. The learned Trial Court has failed to record strong, valid and tangible reasons as to how the recall of PW-14 and marking of the proposed documents are essential to the just decision of the case. The impugned order is mechanical and does not satisfy the requirements of Section 348 BNSS.

Epilogue:

52. A criminal trial is not a game of strategy between the prosecution and the defence. It is a solemn judicial search for truth. But the search for truth must proceed within the boundaries of fairness, legality and procedural discipline. The Court cannot allow the prosecution to repair, at the fag end of trial, what it failed to establish during the normal course of evidence, unless the proposed evidence is shown to be truly indispensable for justice.

53. Section 348 BNSS is a powerful judicial instrument. It is meant to prevent failure of justice, not to confer a second innings upon a negligent litigant. The power to recall a witness must be exercised not merely because the evidence may be useful, but because its absence would render the decision unjust. That degree of satisfaction is absent in the impugned order.

54. Accordingly, this Criminal Original Petition is **allowed**. The order dated 09.09.2025 passed in Crl.M.P.No.01 of 2025 in S.C.No. 187 of 2022 on the file of the learned Additional District and

Sessions Judge, Fast Track Court, Kumbakonam, Thanjavur District, is hereby **set aside**.

55. The learned Additional District and Sessions Judge, Fast Track Court, Kumbakonam, Thanjavur District, is directed to proceed with S.C.No.187 of 2022 in accordance with law and dispose of the same as expeditiously as possible, uninfluenced by any observation made by this Court on the merits of the main case. Consequently, connected miscellaneous petitions are closed.

01.06.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Sml

To

1. The Inspector of Police,
   Kumbakonam Taluk Police Station,
   Thanjavur District.

2. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

L.VICTORIA GOWRI, J.

Sml

CRL OP(MD)No.1327 of 2026

01.06.2026