

Crl.OP(MD).No.13189 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 09.07.2026

ORDER PRONOUNCED ON : 14.07.2026

CORAM

THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR

Crl.OP.(MD)No.13189 of 2026

R.Karuppaiya

....Petitioner/Defacto Complainant

Vs

1.State of Tamil Nadu Rep.through
The Inspector of Police
Eriyodu Police Station
Dindigul District

.....Respondent/Complainant

2.Ramakrishnan

....Respondent/Accused

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to set aside the returned docket order dated 09.02.2026 on the file of the Fast Track Mahila Court at Dindigul consequently direct the first respondent police to add under Section 11(iv) and 14 of POCSO Act 2012 in S.C.No.89 of 2024 on the file of the Fast Track Mahila Court at Dindigul.

For Petitioners

: Mr.V.Duraipandi

For Respondent

: Mr.P.Samuel Gunasingh
Government Advocate(Crl.side) for R1
:Mr.M.Venkatesan for R2



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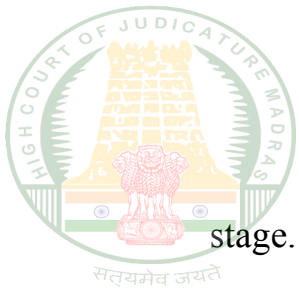
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ORDER

The present petition has been filed seeking to set aside the docket order dated 09.02.2026 passed by Fast Track Mahila Court at Dindigul and consequently direct the first respondent police to add under Section 11(iv) and 14 of POCSO Act 2012.

2.A perusal of the records reveals that the petitioner herein is the defacto complainant in Crime No.780 of 2020 on the file of the respondent police wherein an F.I.R has been registered under Section 305 of I.P.C as against the second respondent herein.

3.As per allegation in the F.I.R, the accused person is said to have been in love with the minor daughter of the defacto complainant. When the defacto complainant's daughter insisted for marriage, the accused had refused and alleged to have stated that till your are alive, I have problem, go and commit suicide. Thereafter, the defacto complainant's daughter had committed suicide. Hence, an F.I.R under Section 305 of I.P.C. After investigation, the charge sheet came to be laid by the first respondent police before Judicial Magistrate, Vedasanthur under Section 305 I.P.C. The petitioner herein had filed criminal miscellaneous petition under Section 239 of BNSS (216 of Cr.P.C) to add the provisions of POCSO Act. The said application has been returned by the trial Court citing that the petition is not maintainable at this



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stage. Challenging the same, the present petition has been filed.

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4. According to the learned counsel appearing for the petitioner, the confession of the accused and Section 161 of Cr.P.C statement of various witnesses would clearly indicate that the commission of offence by accused person under Section 11(iv) and 14 of POCSO Act, 2012. According to him, an application under Section 239 of BNSS (Section 216 of Cr.P.C) is maintainable and he prayed for setting aside of the return order and directing the first respondent police to incorporate the above said application.

5. Per contra, the learned Government Advocate (Crl.side) appearing for the first respondent submitted that none of the witnesses have spoken about the sexual harassment of the accused. He had relied upon the postmortem report and pointed out that there is no allegation of sexual harassment.

6. The learned counsel for the second respondent/accused also relied upon the postmortem report and 161(3) Cr.P.C statement of various witnesses and contended that such a request made by the petitioner does not emerge from any document. He had further submitted that he had already filed an application seeking to quash the charge sheet and the same is pending.

7. Heard the learned counsel appearing on either side and perused the material records.

8. The present petition had been filed seeking to set aside the order passed by the trial Court returning an application filed by the petitioner under



Section 239 of BNSS.

WEB COPY **Section 239 in Bharatiya Nagarik Suraksha Sanhita, 2023**

239. Court may alter charge.

“(1)Any Court may alter or add to any charge at any time before judgment is pronounced.

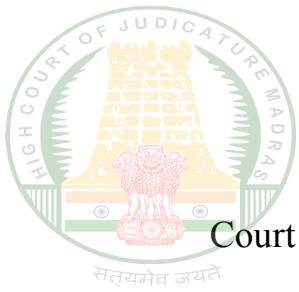
(2)Every such alteration or addition shall be read and explained to the accused.

(3)If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4)If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5)If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

9.It deals with the power of the Court to alter or add any charge at any time before judgment is pronounced. Unless materials are on record, the

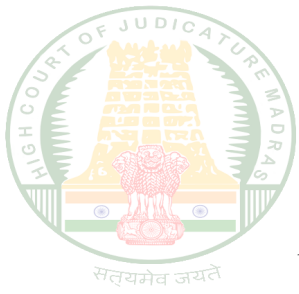


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Court cannot invoke Section 239 of BNSS. In the present case, the evidence as on today does not attract any one of the provisions of the POCSO Act. In such circumstances, the trial Court has rightly returned under Section 239 of BNSS on the ground that it is not maintainable at this stage. In case, if after evidence is recorded, if the Court is of the opinion that the materials have come on record that would attract the provisions of the POCSO Act, the Court can always at liberty to invoke Section 239 of BNSS and frame the charges under POSCO Act.

10.The Hon'ble Supreme Court in a judgment reported in **(2017) 3 SCC 347 (P.Kartikalakshmi Vs. Sri Ganesh and another)** in paragraph No.6 has held as follows:

“6.Having heard learned counsel for the respective parties, we find force in the submission of learned senior counsel for respondent no.1. Section 216 Cr.P.C. empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 Cr.P.C. to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling



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provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law. “

11.In view of the judgment of the Hon'ble Supreme Court, the present petition under Section 216 of Cr.P.C is not maintainable at the instance of one of the parties. In such circumstances, this Court does not find any reason to interfere in the order of return passed by the trial Court.

12.With the above said observations, this Criminal Original Petition stands disposed of.

14.07.2026.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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1.The Fast Track Mahila Court at Dindigul

2.The Inspector of Police
Eriyodu Police Station
Dindigul District

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR, J.

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