



Crl.O.P.(MD).No.13722 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2026

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

Crl.O.P(MD)No.13722 of 2026

Sankar

... Petitioner/Petitioner/Accused

Vs

The State of Tamil Nadu,
Represented by
The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.
(Crime No.398 of 2012)

... Respondent/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 03.11.2025 made in Crl.M.P.No.371 of 2025 in Spl.S.C.No.22 of 2020 on the file of the Special Court of POCSO Act, Nagercoil and allow the above petition.

For Petitioner : Mr.V.Balaji Rajaram

For Respondent : Mr.B.Arun
Counsel for State of TN(Crl.Side)



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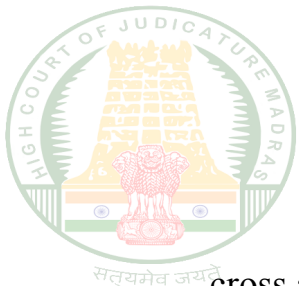
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ORDER

The present petition has been filed by the sole accused in Spl.S.C.No. 22 of 2020 on the file of the Special Court of POCSO Act, Nagercoil, Kanyakumari District, seeking to set aside the order passed in Crl.M.P.No.371 of 2025 dated 03.11.2025.

2. The petitioner has been charged with the offence under Sections 5 and 6 of POCSO Act. The victim girl/P.W.1 was chief examined between 08.04.2025 and 07.07.2025. The petitioner herein had not cross examined the victim girl on the ground that a copy of Section 161(3) of Cr.P.C Statement of the victim girl was not furnished along with the charge sheet. The Court found that the said statement is not in its records and permitted the petitioner to continue the cross examination on a different date. Such an order came to be passed by the trial Court on 08.04.2025.

3. On 22.04.2025, a memo was filed on the side of the prosecution along with a carbon copy of Section 161 (3) of Cr.P.C. statement of the victim girl on 07.07.2025. An application was filed by the petitioner to defer the



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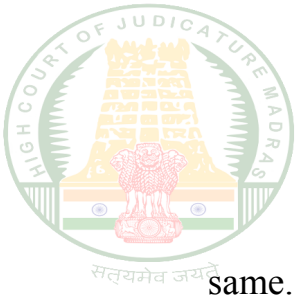
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cross and the same was dismissed on the same day.

4. The prosecution had filed Crl.M.P.No.118 of 2026 under Section 348 of BNSS to examine two police officials namely Mr.Jayapandi and Mr.Balaji, Inspector of Police, Boothapandi Police Station as additional witnesses.

5. According to the learned counsel appearing for the petitioner, they are the officials who have recorded Section 161 (3) of Cr.P.C Statement of the victim girl. This application was allowed by the trial Court on 15.04.2026. Even before that the petitioner has filed an application under Section 348 of BNSS on 12.08.2020, seeking the permission of the Court to recall P.W.1 for the purpose of cross examination. This application has been dismissed on 03.11.2025 on invoking Section 33 (5) of the POCSO Act. Challenging the same the present petition has been filed.

6. According to the learned counsel appearing for the petitioner, till the petitioner had filed an application under Section 348 of BNSS, a copy of Section 161(3) of Cr.P.C statement of the victim girl was not served upon him. Only thereafter, he had filed an copy application and got a copy of the



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same. In such circumstances, not cross examining P.W.1 on the side of the accused person cannot be found fault with. Hence, he prayed for allowing this petition.

7. Per contra, the learned Counsel for State of TN (Crl.Side) appearing for the respondent submitted that a memo was filed along with carbon copy of Section 161 (3) or Cr.P.C Statement of the victim girl before the Court on 22.04.2025 itself. During the said period, the chief examination of P.W.1 was going on and in such circumstances, now the petitioner cannot claim that he did not get a copy of 161 (3) statement of the victim girl and the application having been filed after a period of four months, is liable to be dismissed on the ground of delay.

8. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

9. It could be seen from the deposition of P.W.1 that the Court had by itself deferred the continuation of cross examination of P.W.1 on the ground that the 161(3) statement of the victim is not in its files. The e-Court diary



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extract of the trial Court reveals that a carbon copy of Section 161(3) of Cr.P.C statement of the victim girl was filed before the Court by way of a memo by the prosecution only on 22.04.2025. However, there are no records to show that a copy of such a statement was served upon the petitioner herein. Admittedly, Section 161 (3) of Cr.P.C statement of the victim girl was not filed along with the charge sheet. In fact, the officers who have recorded the Section 161(3) statement of the victim girl were not even cited as a list witness. The prosecution had filed CrI.M.P.No.118 of 2026 and got the permission of the Court to add two police officials as additional witnesses and an order came to be passed only on 15.04.2026 to add those police officials as additional witnesses.

10. In such view of the matter it is clear that Section 161(3) of Cr.P.C statement of the victim girl was not part of the charge sheet and the officers who have recorded such a statement were not shown as list witnesses. In such view of the matter, the petitioner cannot be found fault with for not cross examining the victim girl. Admittedly, the victim girl is aged about 29 years now. In such circumstances, the rigour of Section 33 (5) of POCSO Act cannot be invoked.



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11. In such view of the matter, the order impugned in the petition is set aside and Crl.M.PNo.371 of 2025 stands allowed. The petitioner is permitted to recall P.W.1 for the purpose of cross examination. The petitioner shall pay batta within a period of three days from the date of receipt of a copy of this order. Cross examination of P.W.1 shall be completed on the same day on which she appears. It is made clear that no further opportunity would be granted to the petitioner herein.

12. With the above said observation, this Criminal Original Petition is allowed.

13.07.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Special Court of POCSO Act,
Nagercoil.
2. The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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