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Crl.O.P.(MD).No.13963 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2026

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

Crl.O.P(MD)No.13963 of 2026

Mukirtha

... Petitioner/Petitioner/
Accused No.3

Vs

1. The State of Tamil Nadu
Represented by the Inspector of Police,
All Women Police Station,
Marthandam Police Station,
Marthandam,
Kanniyakumari District.
(Crime No.27 of 2019)

... 1st Respondent/
1st Respondent/Complainant

2.Satheesh Kumar @ Prathap Rithik

3. Vijaya Kumari

... Respondents 2 and 3/
Respondents 2 and 3/
Accused Noa. 1 and 2

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records and set aside the order of return passed by the learned Special Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Kanniyakumari at Nagercoil in un-numbered Crl.M.P.SR.No.Nil of 2026 in Spl.S.C.No.84 of 2019 dated 03.07.2026 in respect of recall



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petition filed by the petitioner under Section 348 of BNSS, 2023, for recalling of P.W.12 and P.W.13 for cross examination on behalf of the petitioner.

For Petitioner : Mr.K.Sivabalan
for M/s.Aran Legal Consultancy

For R1 : Mr.B.Arun
Counsel for State of TN (Crl.Side)

ORDER

The present Criminal Original Petition has been filed by A3 in Spl.S.C.No.84 of 2019 on the file of the learned Special Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Kanniyakumari at Nagercoil, seeking to set aside the docket order of return passed by the concerned Court wherein an application filed by the petitioner under Section 311 of Cr.P.C has been returned as not maintainable.

2. In the above said case, P.W.12 was chief and cross examined on 09.02.2026 and P.W.13 was chief and cross examined on 11.05.2026. A common counsel has been engaged by all the three accused.



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3. According to the learned counsel appearing for the petitioner, the third accused stands on a different footing and therefore, in the cross examination conducted by the common counsel, questions of touching upon the non-involvement of A3 have not been suggested to P.W.12 and P.W.13. Therefore, a separate counsel was engaged by A3 on 22.06.2026 and immediately on 03.07.2026, the present application under Section 311 of Cr.P.C has been filed.

4. According to the learned counsel appearing for the petitioner, unless third accused is permitted to independently cross examine P.W.12 and P.W.13, it would cause great prejudice to the petitioner. He further submitted that the cross examination by the common counsel would not in any way take away the rights of the third accused. Therefore, the trial Court ought to have numbered the petition and decided the same on merits.

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



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6. In paragraph Nos.5 and 7 of the application filed under Section 311 of Cr.P.C, the petitioner has given some reasons for recalling P.W.12 and P.W.13 for cross examining them independently on behalf of the third accused. In such circumstances, the trial Court ought not to have returned the application without even numbering the same.

7. In view of the above said facts, the order impugned in the petition is set aside and the learned trial Judge is directed to number the same and dispose of the case on merits and in accordance with law.

8. With the above said observations, this Criminal Original Petition is allowed.

10.07.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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Note: 1) The Registry is directed to return the original records after getting necessary acknowledgment from the learned counsel appearing for the petitioner.

2) Issue order copy on 10.07.2026



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To

1. The Special Judge,
Special Court for Exclusive
Trial of Cases under POCSO Act,
Kanniyakumari at Nagercoil
2. The Inspector of Police,
All Women Police Station,
Marthandam Police Station,
Marthandam,
Kanniyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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