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Crl.O.P.(MD).No.13965 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.13965 of 2026

N.Siva Yoga Raja

... Petitioner/Petitioner/
Accused

Vs

The Inspector of Police,
All Women Police Station,
(AWPS), Kanyakumari,
Kanyakumari District.
(Crime No.31 of 2022)

... Respondent/
Respondent/Petitioner

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records and set aside the order passed by the learned Special Judge, Special Court under POCSO Act Cases, Kanyakumari at Nagercoil in Crl.M.P.No.88 of 2026 in Spl.S.C.No.125 of 2022, dated 26.03.2026 in respect of dismissing the petition filed by the petitioner under Section 348 of BNSS, 2023.

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

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



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ORDER

The present Criminal Original Petition has been filed by the sole accused in Spl.S.C.No.125 of 2022, on the file of the learned Special Judge, Special Court under POCSO Act Cases, Kanyakumari at Nagercoil, challenging the order dated 26.03.2026 passed by the trial Court dismissing an application filed in Crl.M.P.No.88 of 2026 under Section 348 of BNSS, 2023.

2. A perusal of the records reveal that P.W.1 to P.W.3 were examined on 22.01.2026. The defence counsel was not present on that day. A new counsel was engaged on 10.02.2026 and the present application has been field on 12.03.2026 seeking to recall P.W.1 to P.W3.

3. The trial Court has chosen to dismiss the application relying upon Section 33 (5) of POCSO Act and on the ground of delay on the part of the petitioner. The trial Court has further pointed out that despite giving opportunity, due to non appearance of the counsel, cross examination of P.W.1 to P.W.3 have not been conducted. Challenging the same, the present petition



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has been filed.

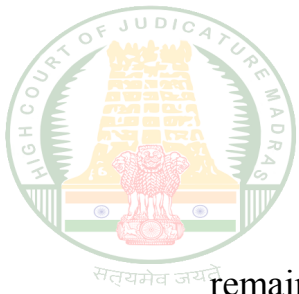
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4. According to the learned counsel appearing for the petitioner, though he has engaged a counsel, his counsel was not present on the date of chief examination of P.W.1 to P.W.3 and therefore, he was constrained to engage a new counsel on 10.02.2026 and the present application has been filed immediately and due to the fault on the part of the counsel, the petitioner may not be put to great prejudice. He further submitted that the victim girl had attained majority and in such circumstances, the present application ought to have been entertained by the Court.

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

6. It could be seen from the records that the year of birth of victim girl is 2004 and as on today, she is 22 years old. When the chief examination was conducted, the victim girl was a major. In such circumstances, the rigour of Section 33 (5) of POCSO Act would not get attracted.

7. Considering the fact that the counsel engaged by the petitioner had



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remained absent on the date of chief examination of P.W.1 to P.W.3 and after engaging a new counsel, the present application has been filed within a reasonable time, in order to protect the interest of the petitioner, one more opportunity has to be granted to the petitioner to cross examine P.W.1 to P.W.3.

8. In view of the above said facts, this Court is inclined to pass the following order:

(a) The order impugned in the petition is set aside and the petitioner shall be permitted to recall P.W.1 to P.W.3 for the purpose of cross examination;

(b) The petitioner is directed to pay batta within a period of three days from the date of receipt of a copy of this order.

(c) The cross examination shall be completed on the date on which the witnesses appear, and

(d) No further opportunity shall be granted to the petitioner.



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9. 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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To

1. The Special Judge,
Special Court under POCSO Act Cases,
Kanyakumari at Nagercoil.
2. The Inspector of Police,
All Women Police Station,
(AWPS), Kanyakumari
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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