



CrI.M.P(MD).No.15525 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 11.08.2026

ORDER PRONOUNCED ON : 17.08.2026

CORAM

THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR

**CrI.M.P(MD).No.15525 of 2026
in CrI.OP(MD).No.9574 of 2026**

State of Tamil Nadu Rep.by
The Inspector of Police
All Women Police Station
Orathanadu, Thanjavur District
Crime No.13 of 2024.

...Petitioner/Respondent/Complainant

Vs

Kavi @ Kavidasan

...Respondent/Petitioner/Accused No.1

Prayer: Petition is filed under Section 528 of BNSS, 2023, to recall the order dated 21.05.2026 passed in CrI.OP(MD).No.9574 of 2026 on the file of this Court and upon such recall, clarify that the order dated 15.04.2026 passed by the Principal Special Judge for Exclusive Trial of Cases under the POCSO Act, Thanjavur in Cr.M.P.No.218 of 2026 in S.C.No.278 of 2024 shall be given effect in entirety by permitting the prosecution to recall of PW1 and PW10 and the examination of the additional witnesses and marking of additional documents for the limited purpose of proving and marking the scientific, electronic and telecom records already available on the file of the



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trial Court, leaving all questions relating to admissibility, mode of proof and evidentiary value of such documents to be decided by the trial Court in accordance with law.

For Petitioner : Mr.P.Samuel Gunasingh
Government Advocate (Crl.side)

For Respondent : Mr.G.Karnan

ORDER

The present petition has been filed by the prosecution seeking to recall the order dated 21.05.2026 passed by this Court in Crl.O.P.(MD) No.9574 of 2026. 2.

(2-A).The factual backdrop giving rise to the present petition is as follows:

(i) The respondent herein is the first accused in S.C.No.278 of 2024, pending on the file of the learned Principal Special Judge for Exclusive Trial of Cases under the POCSO Act, Thanjavur. He, along with three other accused, is facing trial for various offences punishable under the provisions of the POCSO Act.

(ii) During the pendency of the trial, the prosecution filed an application under Section 311 Cr.P.C. in Cr.M.P.No.218 of 2026 seeking to recall PW1 and PW10 and, in the very same application, to examine five



additional witnesses. The said application was allowed by the learned trial Judge by order dated 15.04.2026. Aggrieved by the said order, the first accused preferred Crl.O.P.(MD) No.9574 of 2026 before this Court. When the said petition came up for admission, the learned Government Advocate (Criminal Side), appearing for the prosecution, submitted that the prosecution would confine its request to the recall of PW1 and PW10 and that it did not propose to examine any additional witness.

(iii) In view of the said submission and since the accused had no objection to the recall of PW1 and PW10, this Court recorded the submission of the learned Government Advocate (Criminal Side) and disposed of the Criminal Original Petition. It is significant to note that the said order was not passed upon an adjudication of the merits of the claim relating to the additional witnesses. The petition came to be disposed of solely on the basis of the submission made on behalf of the prosecution.

3. The present petition in Crl.M.P.(MD) No.15525 of 2026 has thereafter been filed by the prosecution seeking recall of the order dated 21.05.2026 and for permitting the prosecution to examine the additional witnesses and mark the additional documents, leaving the questions relating to their admissibility, mode of proof and evidentiary value open for consideration by the learned trial Court in accordance with law.



WEB COPY (B).Submissions of the counsel appearing on either side:

4. The learned Government Advocate (Criminal Side), appearing for the prosecution, would submit that the earlier submission made before this Court was occasioned by a bona fide miscommunication between the investigating agency and the prosecutor who was conducting the matter at the relevant point of time. According to him, the necessity for examining the additional witnesses and marking the additional documents, particularly the scientific evidence, was not brought to the notice of the learned prosecutor when the matter was taken up for admission.

5. The learned Government Advocate would further submit that the accused are facing serious charges including the allegation of gang rape, and that the occurrence itself was videographed. It is submitted that, even prior to the filing of the final report, the vaginal smear of the victim, the leggings of the victim and the innerwear of the accused had been forwarded for DNA analysis. However, the report of the laboratory was made ready only subsequent to the filing of the final report and was forwarded by the laboratory directly to the learned trial Court. According to the prosecution, in order to formally prove and mark the said DNA report, the scientific officer concerned is required to be examined.



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6. It is further submitted that the nodal officers of three mobile service providers are required to be examined for the purpose of proving the call detail records and tower locations, which, according to the prosecution, would establish the communications between the first accused and the victim. It is also submitted that one Mr.S.Anand, Police Constable, had been cited as an additional witness in Cr.M.P.No.218 of 2026 for the purpose of marking the CCTV footage obtained from the Bank, which had initially been recorded on a mobile phone and thereafter transferred to a pen drive. However, on obtaining appropriate instructions, the learned Government Advocate would submit that, instead of examining the said Police Constable, the prosecution proposes to examine the concerned Bank Manager, who is already a listed witness, for the purpose of proving the CCTV footage obtained from the Bank, wherein an altercation between the victim and the accused is stated to have been captured.

7. According to the learned Government Advocate, the examination of the scientific officer of the laboratory, the nodal officers of the three mobile service providers and the Bank Manager, and the marking of the DNA laboratory report, call detail records along with tower location particulars and CCTV footage obtained from the Bank, are necessary for a complete and effective adjudication of the case.



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8. The learned Government Advocate would further submit that the laboratory report and the certificates under Section 65-B of the Indian Evidence Act, 1872, issued by the nodal officers of the respective mobile service providers and the Bank Manager, came to be received only after the filing of the final report. It is submitted that, even at the time of filing the final report, a separate communication had been placed on record seeking liberty to produce the said documents subsequently. It is therefore contended that the documents now sought to be produced are not the result of any further investigation undertaken subsequent to the filing of the final report, but are materials which had already been requisitioned during the course of investigation and which became available only subsequently. According to the prosecution, unless the said materials are formally proved through the competent witnesses, the prosecution would be seriously prejudiced in placing the scientific evidence before the Court.

9. The learned Government Advocate would submit that the relevance and necessity of the aforesaid scientific evidence were not properly brought to the notice of the learned prosecutor by the investigating agency at the relevant point of time. It was owing to such bona fide miscommunication that the then learned prosecutor made the submission before this Court that the prosecution would be satisfied with the recall of PW1 and PW10 and that no



additional witness was proposed to be examined.

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10. Per contra, the learned counsel appearing for the respondent/accused would strongly oppose the maintainability of the present petition. According to him, a miscommunication between the investigating agency and the prosecutor, or an erroneous concession made by the prosecutor before the Court, cannot constitute a legally sustainable ground for recalling an order already passed by this Court. It is his submission that the prosecution is, in substance, seeking a review of the order dated 21.05.2026, which is expressly prohibited by Section 362 Cr.P.C. In support of his submission, reliance has been placed upon the judgments of the Hon'ble Supreme Court in *Narayan Prasad v. State of Bihar and others*, reported in **(2019) 14 SCC 726**; *Smt.Sooraj Devi v. Pyare Lal and another*, reported in **(1981) 1 SCC 500**; *Vikram Bakshi and others v. R.P.Khosla and another*, reported as **2025 INSC 1020**; and *Raghunath Sharma and others v. State of Haryana and another*, reported as **2025 INSC 723**.

11. The learned counsel would contend that the prayer made by the prosecution, though couched as one for recall, is nothing but an attempt to have the earlier order reconsidered and modified on the basis of facts and circumstances which were admittedly within the knowledge of the prosecution. Such a course, according to him, would amount to reviewing the



earlier order, which is impermissible in view of the statutory embargo

contained in Section 362 Cr.P.C.

12. This Court has considered the rival submissions and perused the materials placed on record.

(C).Discussion:

13. At the outset, it is necessary to examine the nature of the order dated 21.05.2026. The said order was not the culmination of an adjudication on the merits of the prosecution's entitlement to examine the additional witnesses. The order came to be passed solely on the basis of the categorical submission made by the learned Government Advocate (Criminal Side), appearing for the prosecution, that the prosecution would confine itself to the recall of PW1 and PW10 and that no additional witness would be examined. The said submission was recorded by this Court and, in view of the same, the Criminal Original Petition was disposed of. Thus, there was no adjudication by this Court either accepting or rejecting the prosecution's claim regarding the examination of the additional witnesses or the marking of the additional documents.

14. The legal position regarding the scope of Section 362 Cr.P.C. and the limited circumstances in which the inherent jurisdiction of the Court can be invoked notwithstanding the said statutory bar, has been authoritatively



reiterated by the Hon'ble Supreme Court in *Raghunath Sharma and others v.*

State of Haryana and another, reported as **2025 INSC 723**. In paragraph 14,

the Hon'ble Supreme Court has held as follows:

“1. The bar under Section 362 Cr.P.C. is almost absolute;

2. The only exceptions to the bar, which would then permit the invocation of inherent powers, would be if it is necessary to meet the ends of justice; or to remedy the abuse of the process of law. Other than the above two circumstances, such inherent powers do not permit the doing of what stands prohibited by the text of the statute;

3. To clarify, it may be stated that when a Court finds itself in such extraordinary circumstances, the reasons for exercising such power should be recorded, justifying the invocation thereof.”

15. The aforesaid pronouncement makes the legal position abundantly clear. The embargo under Section 362 Cr.P.C. is stringent and ordinarily operates against alteration, review or recall of a judgment or final order. The inherent jurisdiction of the Court can be invoked notwithstanding such embargo only in exceptional circumstances where such intervention is demonstrably necessary either to secure the ends of justice or to prevent an abuse of the process of law. Even in such an eventuality, the exercise of such extraordinary jurisdiction must be supported by reasons which disclose the



existence of such exceptional circumstances.

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16. Tested on the aforesaid principles, this Court is unable to hold that the facts pleaded by the prosecution constitute such an extraordinary circumstance as would justify recalling the order dated 21.05.2026. The prosecution was represented before this Court by the learned Government Advocate (Criminal Side), who made a conscious and categorical submission that the prosecution would be satisfied with the recall of PW1 and PW10 and that no additional witness would be examined. The said submission was recorded and the petition was disposed of accordingly. A subsequent realisation on the part of the prosecution that certain materials had not been brought to the notice of the learned prosecutor cannot, by itself, constitute a ground to invoke the exceptional jurisdiction of this Court contrary to the statutory mandate contained in Section 362 Cr.P.C.

17. At the same time, the matter cannot be viewed solely from the standpoint of the concession made by the learned prosecutor. The materials placed before this Court indicate that the DNA report and the certificates under Section 65-B of the Indian Evidence Act, which had been requisitioned during the course of investigation, were received only subsequent to the filing of the final report. It is also stated that the prosecution had, at the time of filing the final report, brought to the notice of the learned trial Court the fact



that certain documents were yet to be received and had sought liberty to produce them subsequently. Thus, the present case stands on a somewhat different footing from a case where the prosecution, having consciously abandoned a particular piece of evidence, seeks to reopen the matter merely because it has subsequently changed its mind.

18. More importantly, the power of the trial Court to summon or examine a material witness, or to recall and re-examine a witness already examined, is a distinct statutory power. The exercise of that power is governed by the requirement that such evidence must appear to the Court to be essential for a just decision of the case. The Hon'ble Supreme Court, in *Shailendra Kumar v. State of Bihar and others*, reported in **(2002) 1 SCC 655**, had occasion to consider a similar situation. In that case, notwithstanding the earlier proceedings relating to closure of the prosecution evidence, a subsequent application under Section 311 Cr.P.C. seeking examination of material witnesses was considered. The Hon'ble Supreme Court, after referring to the wide amplitude of Section 311 Cr.P.C., held in paragraphs 10 to 12 that even negligence, laches or mistakes on the part of the prosecution in failing to examine material witnesses would not denude the criminal Court of its power to summon and examine such witnesses where their evidence appears essential for a just decision of the case. The Hon'ble Supreme Court



observed: “Section 311 empowers the Court to summon material witnesses though not summoned as witness and to examine or recall and re-examine if their evidence appears to it to be essential to the just decision of the case.” The Hon’ble Supreme Court further emphasised that the function of a criminal Court is the administration of criminal justice and not to count the errors committed by the parties or determine which party had performed better.

19. The principle emerging from the aforesaid judgment is that the power under Section 311 Cr.P.C., now corresponding to Section 348 of the BNSS, is intended to enable the criminal Court to arrive at a just decision. The exercise of such power is not rendered unavailable merely because there has been negligence, omission, laches or even a mistake on the part of the prosecution. The determinative consideration is whether the evidence sought to be brought before the Court is essential for a just decision of the case.

20. In the present case, the prosecution seeks to place before the trial Court scientific and electronic materials, namely, the DNA laboratory report, call detail records and tower location particulars and CCTV footage, which are stated to have been obtained pursuant to steps already taken during investigation. The prosecution proposes to prove those materials through the scientific officer, the nodal officers of the concerned mobile service providers



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and the Bank Manager, respectively. Having regard to the nature of the charges, the nature of the materials sought to be produced and the stage of the proceedings, this Court is of the considered view that the prosecution ought not to be foreclosed from placing such material before the learned trial Court merely on account of the submission earlier made by the learned prosecutor before this Court. However, that does not mean that this Court can recall or modify its earlier order in the teeth of the statutory bar under Section 362 Cr.P.C.

21. The appropriate course, therefore, would be to leave it open to the prosecution to place all the relevant facts and materials before the learned trial Court by filing an appropriate application under Section 348 of the BNSS. The prosecution shall set out therein the relevance and necessity of each of the proposed witnesses and documents, including the circumstances under which the documents came to be received after the filing of the final report. The learned trial Court shall consider such application independently, uninfluenced by the earlier concession made by the learned prosecutor before this Court, and in accordance with the parameters governing the exercise of power under Section 348 of the BNSS. Needless to state, the respondent/accused shall be afforded a full and effective opportunity to contest the said application and to raise all objections available to him in law,



including objections relating to admissibility, mode of proof, relevancy and evidentiary value.

22. This course would, in the considered opinion of this Court, strike the appropriate balance between the statutory prohibition contained in Section 362 Cr.P.C. and the equally important duty of the criminal Court to ensure that material evidence, if genuinely essential for arriving at a just decision, is not shut out merely on account of an inadvertent omission or erroneous concession on the part of the prosecution.

23. For the foregoing reasons, this Court finds no sufficient ground to recall the order dated 21.05.2026 passed in Crl.O.P.(MD) No.9574 of 2026. Accordingly, the present Criminal Miscellaneous Petition is dismissed. However, the prosecution is granted liberty to file an appropriate application before the learned trial Court under Section 348 of the BNSS seeking permission to examine the proposed additional witnesses and to produce and mark the aforesaid documents. If any such application is filed, the learned trial Court shall consider the same independently and in accordance with law, after affording due opportunity to the accused.

24. It is made clear that this Court has expressed no opinion on the admissibility, mode of proof, relevancy or evidentiary value of any of the documents or materials sought to be produced by the prosecution, and all



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such questions are left open for determination by the learned trial Court at the appropriate stage.

(D).Conclusion:

25. With the above observations and liberty, the present Criminal Miscellaneous Petition stands dismissed.

17.08.2026.

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

1. The Principal Special Judge for Exclusive Trial of Cases
under the POCSO Act, Thanjavur

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



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R.VIJAYAKUMAR, J.

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