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Crl.O.P.(MD).No.15649 of 20268.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2026

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

Crl.O.P(MD)No.15649 of 2026

R.Mathesh

... Petitioner/Sole Accused

Vs

State of Tamil Nadu
Represented by
The Inspector of Police,
Theni All Women Police Station,
Theni District.
Crime No.6 of 2025

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to set aside the order passed in Cr.M.P.No.303 of 2026 in Spl.S.C.No. 110 of 2025 dated 14.07.2026 on the file of the learned Sessions Judge, Special Court for Exclusive trial of Cases under POCSO Act, Theni and permit the petitioner to recall the witnesses P.W.1, P.W.2, P.W.3 and P.W.4 for cross examination and pass such further or other orders as this Court may deem fit.

For Petitioner : Mr.K.Dinesh

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



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ORDER

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The present petition has been filed by the sole accused in Spl.S,C.No. 110 of 2025 on the file of the learned Sessions Judge, Special Court for Exclusive trial of Cases under POCSO Act, Theni, challenging the dismissal of his application filed under Section 348 of BNSS.

2. A perusal of the records reveal that the petitioner has been charged with the offences under Sections 11(4) & 12 of POCSO Act and Section 87 of BNS Act.

3. In the above said case, P.W.1 to P.W.4 were chief examined on 24.11.2025, however none of them were cross examined. After the other witnesses were chief and cross examined, the present application has been filed on 07.07.2026 to recall P.W.1 to P.W.4 for the purpose of cross examination. This application has been dismissed by the trial Court on the ground that the victim child is a school going child and she cannot be repeatedly called upon to appear before the court. Challenging the same, the present petition has been filed.



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4. According to the learned counsel appearing for the petitioner, there is no serious allegation as against the petitioner herein and the allegations in the charge sheet arise out of a love affair which is admitted by the victim girl in her statement recorded under Section 164 of Cr.P.C. Therefore, in order to bring out the past instances, he would like to recall P.W.1 to P.W.4 for the purpose of cross examination.

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 victim child is a school going child and the petitioner has filed the present application after a delay of seven months and this Court is not inclined to order recall of P.W.2/victim child for the purpose of cross examination. However, as far as the other witnesses namely the mother and the grandparents of the victim child/ P.W.1, P.W.3 and P.W.4 are concerned, in the interest of justice, they could be recalled for the purpose of cross examination.



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

(a) The order of the trial Court insofar as the dismissal of an application with regard to P.W.2 is concerned stands confirmed and it is set aside with regard to P.W.1, P.W.3 and P.W.4;

(b)The petitioner is directed to pay batta to recall P.W.1, P.W.3 and P.W.4, within a period of three days from the date of receipt of a copy of this order;

c) The petitioner shall cross examine P.W.1, P.W.3 and P.W.4 on the date of their appearance: and

(d) No further adjournments shall be sought for by the petitioner herein and no further opportunity can be granted for cross examination of the petitioner herein.

8. With the above said observation, this Criminal Petition is partly allowed.

29.07.2026

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

1. The Sessions Judge,
Special Court for Exclusive trial of Cases under POCSO Act,
Theni.
2. The Inspector of Police,
Theni All Women Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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