



Crl.O.P.(MD).No.17390 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.08.2026

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

Crl.O.P(MD)No.17390 of 2026

and

Crl.M.P(MD) No.16813 of 2026

Chithiraimuthu

... Petitioner/Petitioner
Accused

Vs

State of Tamil Nadu
Represented by
The Inspector of Police,
All Women Police Station,
Theni.
(In Crime No.45 of 2022)

... 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 passed in Crl.M.P.No.297 of 2026 in Spl.S.C.No.170 of 2023 dated 20.07.2026 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Theni and pass such other or further orders as this Court may deem fit.

For Petitioner : Mr.D.Packiaraj

For Respondent : Mr.B.Arun
Government Advocate (Crl.Side)



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ORDER

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The present petition has been filed by the accused in Spl.S.C.No.170 of 2023 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the 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 is charged with the offences under Sections 67 and 67(A) of IT Act, 2000 and Sections 11(4) and 12 of POCSO Act.

3. P.W.1 was chief examined on 03.07.2025, P.W.2 (Victim) and P.W.3 were chief examined on 13.08.2025 and P.W.11 was chief examined on 01.07.2026. However, they were not cross examined on the said date. The petitioner had filed Crl.M.P.No.101 of 2026 to recall P.W.1 to P.W.5. The said application was allowed and P.W.1 to P.W.5 have appeared on 21.05.2026 and they were not cross examined by the accused. Again P.W.1, P.W.2 and P.W.4 have appeared on 11.06.2026. Even on the said date, they were not cross examined. Thereafter, there was a change of counsel on the side of the accused and the second application has been filed under Section 348 BNSS.



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4. The trial Court considering the delaying tactics on the part of the petitioner herein has chosen to dismiss the above said application. Challenging the same, the present petition has been filed.

5. According to the learned counsel appearing for the petitioner, on these dates, the petitioner's counsel was not well and therefore they could not cross examine the witnesses. He further submits that one more chance may be granted to recall all the witnesses for cross examination.

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

7. As far as the victim /P.W.2 is concerned, she was present atleast on three occasions earlier and there was no attempt on the part of the petitioner to cross examine her and in such circumstances, this Court is not inclined to order recall of P.W.2. P.W.3 is the relative of P.W.2 and therefore, the question of recalling P.W.3 also does not arise.



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8. A perusal of the records reveal that P.W.1 and P.W.11 are the police officials, who have not been cross examined by the petitioner.

9. Considering the above said facts, this Court is inclined to pass the following order:

a) the order impugned in the petition is set aside insofar as P.W.1 and P.W.11 are concerned;

b) the petitioner shall be permitted to recall P.W.1 and P.W.11;

c) the petitioner shall pay batta within a period of three weeks from the date of receipt of a copy of this order to recall P.W.1 and P.W.11;

d) The petitioner shall cross examine them on the date on which they appear; and

e) No further opportunity shall be granted to the petitioner for cross examination of P.W.1 and P.W.11.



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10. With the above said observations, this Criminal Original Petition stands partly allowed. Consequently connected Miscellaneous petition is closed.

14.08.2026

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

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



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R.VIJAYAKUMAR,J.

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