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Crl.OP(MD) No.17775 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2026

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

Crl.OP.(MD)No.17775 of 2026
and Crl.MP(MD) No.17118 of 2026

Prakash

... Petitioner

Vs

The State of Tamilnadu Rep By,
The Inspector of Police,
All Women Police Station,
Bodinayakanur, Theni District.
(Crime No.27 of 2024).

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS., to call for the records relating to the order dt.03.11.2025 made in Crl.MP.No.482 of 2025 in Spl.SC.No.49 of 2025 on the file of the learned Principal Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Theni set aside the said order, permit the petitioner to recall and cross-examine PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8.

For Petitioner : Mr.Srikanth

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 sole accused in Spl.SC.No.49 of 2025 on the file of the learned Principal Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Theni, seeking to set aside the order in Crl.M.P.No.482 of 2025. wherein, the request of the petitioner to recall PW1 to PW8 has been rejected.

2.Perusal of the records reveal that the petitioner is charged with the offences under Sections 5(m), 5(l) r/w 6 of POCSO Act, 2012.

3.In this case, PW1 to PW8 have been chief examined between August, 2025 to September, 2025. However, none of the witnesses were cross examined by the petitioner. The present application has been filed on 22.9.2025, seeking to recall PW1 to PW8. The said application dismissed by the trial Court by invoking section 33(5) of POCSO Act on the ground that the victim girl cannot be called repeatedly to testify in the Court. Challenging the same, the present petition has been filed.



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4. According to the learned counsel for the petitioner, the cross examination cannot be conducted on the date of examination of the witnesses, since the previous counsel was not present on the said dates. He also relies upon the decision of this Court in ***Crl.OP(MD) No.22696 of 2022, dated 04.01.2023 between Murugan Vs Inspector of Police, All Women Police Station, Nilakottai, Dindigul District***, wherein, this Court was pleased to allow the application seeking to recall the victim child.

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

6. PW2, victim child has been chief examined on 05.08.2025. PW3 is the mother of PW2 and PW7 is the eyewitnesses to the occurrence. The petitioner wants to cross examine PW1 to PW 8. The trial Court has rejected the application mainly relying upon Section 33(5) of POCSO Act. This Court in the order, dated 04.01.2023 in Crl.OP(MD) No.22696 of 2022 in paragraph No. 10 and 13 as held as follows:

“10. It is pertinent to note that the prohibition under Section 33(5) of POCSO Act for calling the child victim repeatedly would not mean that the accused can be deprived in his right to cross examination in a trial, particularly for a serious offence which is punishable for more than 10 years.



11. Now turning to the hostile witness, according to the trial Court, since P.W.3 had turned hostile, there was no need to cross examine her. Recently, the Hon'ble Supreme Court in Neeraj Dutta Vs. State reported in 2022 Live Law (SC) 1029, while answering the reference, has specifically held that testimony of hostile witness can be considered to convict the accused, if corroborated by other evidence and also reiterated the position that a witness has been declared hostile does not result in an automatic rejection of his evidence and the relevant portion is extracted hereunder:

“This Court cautioned that even if a witness is treated as "hostile" and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence.”

12. Considering the above, the finding of the trial Court with regard to the hostile witness is not proper and is not in accordance with law.



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13. As rightly contended by the learned counsel for the petitioner, in the case on hand, the above petition was not filed for the purpose of further cross examination, but for cross examination itself. It is not the case of the prosecution that the petition under Section 311 Cr.P.C to recall the victim girl and other witnesses were filed belatedly or frivolously. Though the petitioner is at fault, considering the facts and circumstances of the case and also the fact that the witnesses sought to be recalled were not at all cross examined and also taking note of the fact that the petitioner is facing trial for the serious offences, this Court is of the clear view that the petitioner should be given one more opportunity to cross examine the witnesses. But at the same time, considering the length of delay and the conduct of the petitioner, this Court is of the further view that the petitioner must be mulcted with costs and with further condition that the petitioner/accused, should cross examine the witnesses on the day, when the witnesses are produced before the Court and if for any reason, the petitioner fails to cross examine the said witnesses on that particular day, then he will forfeit his right to cross examine them”

7. In view of the aforesaid decision of this Court, this Court is of the considered opinion that the petitioner shall be permitted to recall PW2, PW3 and PW7 alone, and the following order is passed:



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- a) *The impugned order in Crl.M.P. No. 482 of 2025 in Spl.S.C. No.49 of 2025, dated 03.11.2025 passed by the learned Principal Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Theni is set aside and the petitioner shall be permitted to recall and cross examine PW2, PW3 and PW7 alone;***
- b) *the petitioner shall pay batta within a period of three days from the date of receipt of copy of this order;***
- c) *the petitioner is directed to cross examine PW2, PW3 and PW7 on the date on which they appears;***
- d) *the petitioner shall not seek for further cross examination of PW2, PW3 and PW7.***

8.In the above terms, this Criminal Original Petition stands partly allowed. Consequently, connected miscellaneous petition is closed.

18.08.2026

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
PNM



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To

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

2. The Inspector of Police,
All Women Police Station,
Bodinayakanur, Theni District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R.VIJAYAKUMAR, J.

PNM

ORDER MADE IN
Crl.OP.(MD)No.17775 of 2026
and Crl.MP(MD) No.17118 of 2026

18.08.2026