

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY SIX**

PRESENT

THE HONOURABLE SRI JUSTICE J SREENIVAS RAO

CRIMINAL PETITION NO: 9286 OF 2026

Between:

Jalli Shiva Kumar, S/o Jalli Raju, aged 23 years, Occ. Student, R/o H.NO.23-1-29/1, Thyagaraya Colony, Backside Miraj Cinemas, Kothapet, Hyderabad.

...PETITIONER/ACCUSED No. 1

AND

1. The State of State of Telangana,, Rep. by its Public Prosecutor, High Court for the State of Telangana at Hyderabad.
2. Xxxxx xxx xxx, XXXXXXXX XXXXXXXX

...RESPONDENT/ Defacto - COMPLAINANTS

Petition under Section 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased toto set aside the order dated 28-02-2026 in CrI.M.P.No.1410 of 2025 in SC SPL No.292 of 2023 on the file of Fast Track Special Judge For Trial And Disposal Of Rape And Pocso Act Cases, Ranga Reddy Distirct At L.B.Nagar and to pass such other order or orders as this Hon'ble court deems fit and proper.

I.A. NO: 1 OF 2026

Petition under Section 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay all further proceedings in SC SPL No.292 of 2023 on the file of Fast Track Special Judge For Trial And Disposal Of Rape And Pocso Act Cases, Ranga Reddy Distirct At L.B.Nagarand to pass such other order or orders as this Hon'ble court deems fit and proper.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri Kothacheruvu Ramesh Babu , Advocate for the Petitioner and Sri. Jithender Rao Veeramalla the Additional Public Prosecutor on behalf of the Respondent No.1 and None appeared for the Respondent No.2

The Court made the following: ORDER

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

CRIMINAL PETITION No. 9286 of 2026

DATE: 13.07.2026

Between :

Jalli Shiva Kumar.

....Petitioner/Accused No.1

AND

The State of Telangana and another

....Respondents

: O R D E R :

This Criminal Petition has been filed by the petitioner/accused No.1 aggrieved by the order dated 28.02.2026 passed by the learned Fast Track Special Judge for Trial and Disposal of Rape and POCSO Act Cases, Ranga Reddy District at L.B.Nagar in CrI.M.P.No.1410 of 2025 in S.C.Spl. No.292 of 2023, whereby the trial Court dismissed the petition filed by the petitioner seeking to recall PWs.1 and 2 for further cross-examination.

2. Learned Additional Public Prosecutor submitted that pursuant to the order dated 23.06.2026, the concerned Investigating Officer served the notice to LW.1/complainant, who is none other than the father of the victim/LW.2, on 07.07.2026. In spite of service of notice, respondent No.2 has not chosen to enter

appearance. Hence, this Court is not having any option except to proceed with the matter in accordance with law.

3. Heard Mr.K.Ramesh Babu, learned counsel for the petitioner, and Mr. Jithender Rao Veeramalla, learned Additional Public Prosecutor for respondent No.1-State.

4. Learned counsel for the petitioner submitted that the petitioner is accused No.1 in S.C.Spl.No.292 of 2023, for the offences under Sections 354-D and 506 r/w 34 of the Indian Penal Code, 1860 (for short 'the IPC') and Section 11 r/w 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act'). The petitioner could not cross-examine PWs.1 and 2 on 14.11.2025 on the ground that the counsel appearing on behalf of the petitioner and accused No.3 is not attended the Court. Though the petitioner and accused No.3 requested the trial Court to grant adjournment on 14.11.2025, the trial Court directed them to proceed with the cross-examination of PWs.1 and 2 and recorded that the petitioner and accused No.3 cross-examined PWs.1 and 2 though the petitioner has not cross examined. The cross-examination of PWs.1 and 2 is very much essential to prove the innocence of the petitioner. Unless PWs.1 and 2 are recalled for further cross-examination, the petitioner will be put to great hardship.

5. *Per contra*, learned Additional Public Prosecutor submitted that the petitioner filed Crl.M.P.No.1410 of 2025 before the learned trial Court to protract the litigation on one way or the other. As per the provisions of sub-section (5) of Section 33 of the POCSO Act, the victim cannot be called repeatedly to testify in the Court. Hence, the petitioner is not entitled to seek recalling of PWs.1 and 2 for further cross-examination.

6. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that on 14.11.2025 PWs.1 and 2 were examined in chief and they were cross-examined by the learned counsel for accused No.2 and on the said date, the petitioner and accused No.3 specifically requested the learned trial Court seeking adjournment on the ground that their counsel is not responding to their phone calls. At that juncture, the learned trial Court has directed the petitioner and accused No.3 to proceed with the cross-examination. Accordingly, the trial Court recorded in the deposition of PWs.1 and 2 as if the petitioner and accused No.3 had cross-examined them.

7. It is very much relevant to extract the cross-examination of PW.1 by the petitioner and accused No.3, which reads as follows:

“Cross-examination by counsel for Accused No.1 and 3:

A1 and A3 present and represented that their counsel is not responding to their calls. Today victim present as such A1 and A3 directed to cross examine the witness. Chief examination of the victim explained to them through the help of Special PP as they were standing behind the curtain.

Cross examination by A1 and A3 (Party in person):

It is not true to suggest that A1 and A3 (themselves) did not commit any offense against me and they never followed and threatened me as stated by me in my evidence.”

8. The record further reveals that on 19.11.2025, learned counsel appearing on behalf of the petitioner filed CrI.M.P.No.1410 of 2025 under Section 311 of the Cr.P.C. to recall PWs.1 and 2. The learned trial Court dismissed the said petition on the ground that as per the provisions of Section 33(5) of the POCSO Act, the victim shall not be recalled repeatedly to the Court. The said reason given by the learned trial Court is not in dispute. Whereas in the case on hand, the counsel appearing on behalf of the petitioner and accused No.3 before the trial Court has not attended on 14.11.2025 and in the petition, learned counsel for the petitioner specifically mentioned the reason that due to ill-health, he could not attend the Court. In such circumstances the trial Court ought to have given an opportunity to the petitioner by imposing any condition or close

the evidence of PWs.1 and 2, on the other hand, directed the petitioner to proceed with the cross-examination.

9. It is relevant to mention that in **Satbir Singh v. State of Haryana and others**¹, the Hon'ble Supreme Court held that the power under Section 311 Cr.P.C. is very wide and is intended to enable the Court to arrive at the truth and render a just decision. The Court observed that a witness may be recalled at any stage of the trial if such recall is essential for the just decision of the case and when the party seeking recall did not have an earlier opportunity to elicit relevant facts. It was further held that recall should not be refused on technical grounds when such examination would assist the Court in proper adjudication of the matter and when no prejudice would be caused to the opposite party, who would still have the opportunity to cross-examine the witness. Accordingly, the Hon'ble Supreme Court set aside the orders of the courts below and allowed the recall of the witness under Section 311 Cr.P.C. for further examination.

10. It is also relevant to mention that the petitioner is facing trial for the heinous offences and PWs.1 and 2 were not cross-examined on 14.11.2025 due to non-availability of his counsel. It is trite law

¹ Criminal Appeal No.2634 of 2023 dated 29.08.2023

that due to the mistake on the part of the counsel, the party could not be suffered.

11. Taking into consideration the peculiar facts and circumstances of the case as well as the principle laid down by the Hon'ble Supreme Court in **Satbir Singh** (*supra*), this Court is of the considered view that the petitioner is entitled to give an opportunity for cross-examination of PWs.1 and 2, and the impugned order dated 28.02.2026 passed in CrI.MP.No.1410 of 2025 in S.C. Spl. No.292 of 2023 by the learned trial Court is liable to be set aside and accordingly set aside.

12. In the result, the Criminal Petition is allowed, subject to condition that the petitioner shall pay an amount of Rs.5,000/- (Rupees five thousand only) each to PWs.1 and 2 and to conclude the cross-examination of PWs.1 and 2 on the specified date as fixed by the learned trial Court. In default, the learned trial Court is entitled to proceed with the matter in accordance with law.

Miscellaneous applications, pending if any, shall stand closed.

//TRUE COPY//

Sd/- A. JAYASREE
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Fast Track Special Judge for Trial And Disposal of Rape and POCSO Act Cases, RangaReddy District, At L.B.Nagar
2. The Station House Officer, Police Station, Saroornagar, Rachakonda
3. One CC to Sri. Kothacheruvu Ramesh Babu, Advocate [OPUC]
4. Two CCs to Public Prosecutor High Court for the State of Telangana, at Hyderabad [OUT]
5. Two CD Copies

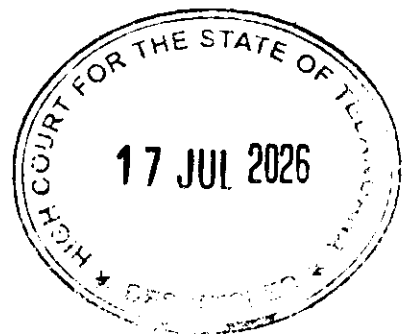
4/11

HIGH COURT

DATED: 13/07/2026

ORDER

CRLP.No.9286 of 2026



CRIMINAL PETITION IS ALLOWED

⑧/MT
17/7/26