



Crl.O.P.(MD).No.22189 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED:08.12.2023**

**CORAM**

**THE HON'BLE MR.JUSTICE G.ILANGO VAN**

**Crl.O.P.(MD).No.22189 of 2023**  
**and Crl.M.P.(MD).No.17343 of 2023**

R.Ramesh

... Petitioner

Vs

1. The Deputy Superintendent Of Police,  
Thiruppathur DSP Office,  
Sivagangai District.

2. The Inspector of Police,  
Thiruppathur All Women Police Station,  
Thiruppathur, Sivagangai District.

... Respondents

**PRAYER :** Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the impugned order dt.20/10/2023 in Crl.MP.No.610/2023 in Spl.SC.NO. 11/2019 on the file of the Sessions Judge, Special Court for POCSO Act 2012, Sivagangai and set aside the same as illegal.

For Petitioner : Mr.S.Arunnithy

For R1,R2 : Mr.M.Vaikkam Karunanithi  
Government Advocate  
(Crl.side)



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**ORDER**

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This Criminal Original Petition filed to set aside the impugned order dt.20/10/2023 in Crl.MP.No.610/2023 in Spl.SC.NO. 11/2019 on the file of the learned Sessions Judge, Special Court for POCSO Act 2012, Sivagangai and set aside the same as illegal.

2.The petitioner is facing charges under Sections 7 r/w 8 of POCSO Act and 3(1)(w)(i) SC/ST (POA) Act. During the trial process, PW1 was examined in chief on 19.04.2021. At that time, a request was made on the side of the accused to defer the chief examination of PW1 till the examination of victim. On that ground, it was also deferred. Later, the victim was examined both in chief and cross on 06.08.2022 and other witnesses were also examined. Likewise, PW8 was examined in chief on 23.03.2022. At that time also a request was made by the accused counsel to defer the cross examination and that was also considered. Thereby, the cross examination of PW1 and PW8 was deferred. Later, the petitioner filed M.P.No.15566 of 2022 seeking to recall of PW1 and PW8. That came to be dismissed on 15.03.2023. Another application filed by the petitioner seeking very same relief that



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also dismissed by the trial Court, citing the earlier dismissal order.

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3.Challenging the same, this petition has been filed on the ground that since the petitioner is facing serious charges and it is necessary to cross-examine the witnesses to substantiate his defence.

4.On a perusal of the records, it is seen that even though the petitioner has not assigned any proper reason to cross examine the PW1 and PW8, who were already deferred, naturally, it is the duty of the trial Court to give an opportunity after cross examination of victim was over. However, the same was not considered by the trial Court. Recall application came to be dismissed and that is the mistake on the part of trial Court.

5.On the sole ground in order to render fair justice, considering the facts and circumstances of the case and the reasons adduced in the petition, this Court is inclined to set aside the impugned order and one more opportunity is given to the petitioner to recall the evidence PW1 and PW8, on payment of cost of Rs.5,000/- (Rupees Five



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Thousand only) each to the respective witnesses within a week, from the date fixed by the trial Court. On that date, the petitioner is directed to examine those witnesses, failing which, the right of the petitioner shall stand forfeited.

6. Accordingly, this criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

**08.12.2023**

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

To

1. The Sessions Judge,  
Special Court for POCSO Act 2012, Sivagangai
2. The Deputy Superintendent Of Police,  
Thiruppathur DSP Office,  
Sivagangai District.
3. The Inspector of Police,  
Thiruppathur All Women Police Station,  
Thiruppathur, Sivagangai District.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

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**G.ILANGO VAN,J.**

PNM

ORDER IN  
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