



Crl.O.P.No.4007 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 4007 of 2025

Thirumal

..... Petitioner

Vs

State, rep. by the
Inspector of Police,
Pennagaram Police Station,
Dharmapuri District.

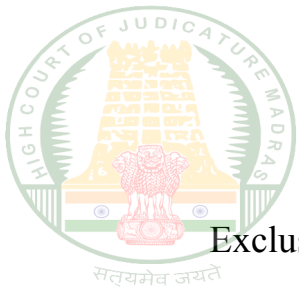
..... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2025, to set aside the order passed in Crl.M.P.No.744 of 2024 in Spl.S.C.No.95 of 2023 dated 04.10.2024 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Dharamapuri.

For Petitioner : Mr.V.Sakkarapani
For Respondent : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed challenging the order dated 04.10.2024 passed in Crl.M.P.No.744 of 2024 in Spl.S.C.No.95 of 2023 by the Sessions Judge, Special Court for



CrI.O.P.No.4007 of 2025

Exclusive Trial of Cases under POCSO Act, Dharamapuri, thereby
WEB CO dismissed the application filed under Section 311 of Cr.P.C. to recall
P.Ws. 1 and 2 for further cross examination.

2. Heard the learned counsel appearing on either side and
perused the materials available on record.

3. The petitioner is an accused and he is facing trial for the
offences under Sections 363, 366 of IPC, Section 5(1), 6 of POCSO Act
on the file of the Special Court for Exclusive Trial of Cases under
POCSO Act, Dharamapuri in Spl.S.C.No.95 of 2023. P.W.1 is the victim
and her mother is P.W.2. Both witnesses were examined in chief and
cross-examined on 06.08.2024. Subsequently, after engaging a new
counsel, the petitioner filed an application seeking to recall P.Ws.1 and 2
on the ground that the earlier counsel failed to cross examine them with
reference to the statement recorded under Section 164 CrI.P.C. Further,
the petitioner had also filed a copy application seeking a certified copy of
the said statement. However, it was submitted that the statement
recorded under Section 164 of Cr.P.C was not available in the bundle.

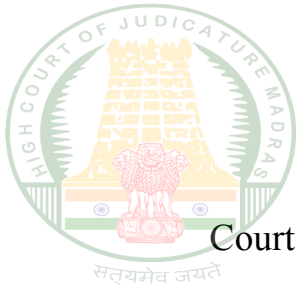


WEB COPY

4. Therefore, the petitioner may be given a fair opportunity to purforth his defence by further cross-examining P.Ws.1 and 2. It is further submitted that P.W.1 has since attained the age of majority and as such, she is competent to be further cross examined.

5. Admittedly, P.Ws.1 & 2 have already been cross-examined by the petitioner. The mere engagement of the new counsel cannot be a ground to recall P.Ws.1 and 2 for further cross examination. It amounts to fill up the lacunae and as such, further cross examination cannot be allowed, that too, on the ground that the earlier counsel on record failed to ask some questions. Further, there is a bar under Section 33(5) of the POCSO Act, repeatedly summoning the victim for cross examination. Therefore, the Trial Court rightly dismissed the petition.

6. In view of the above, this Court finds no infirmity or illegality in the order dated 04.10.2024 passed in Crl.M.P.No.744 of 2024 in Spl.S.C.No.95 of 2023 by the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dharamapuri. Accordingly, this Criminal Original Petition stands dismissed. However, the Trial



CrI.O.P.No.4007 of 2025

Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order.

14.02.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
Lpp
To

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

2. The Inspector of Police,
Pennagaram Police Station,
Dharmapuri District.

3. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.O.P.No.4007 of 2025

G.K.ILANTHIRAIYAN, J.

Lpp

Crl.O.P.No.4007 of 2025

14.02.2025