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Crl.O.P.No.8324 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.03.2025**

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.8324 of 2025

and

Crl.M.P.No.5446 of 2025

1.Waseem

2.S.Rokshana

... Petitioners

Versus

State by,

Inspector of Police,

All Women Police Station, Vellore,

Vellore District. (Crime No.12 of 2023)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order dated 05.12.2024 made in Crl.M.P.No.1567 of 2024 in Spl.S.C.No.135 of 2022 on the file of the Special Judge, for Exclusive Trial of Cases under POCSO Act, 2012, Vellore, Vellore District.

For Petitioners : Mr. C.S. Saravanan

For Respondent : Mr. A. Gopinath,
Government Advocate (Crl.Side)



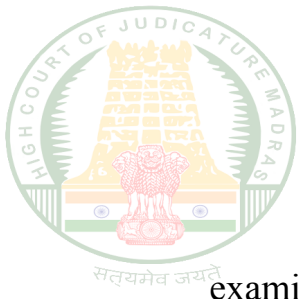
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ORDER

This petition has been filed challenging the order passed in Crl.MP.No.1567 of 2024 in Spl.S.C.No.135 of 2022 dated 05.12.2024, by the learned Special Judge, for Exclusive Trial of Cases under POCSO Act, 2012, Vellore, Vellore District. thereby dismissing the application filed by the petitioners under Section 311 of Cr.P.C., for the purpose of cross-examination of P.W.1, P.W.2, P.W.3 and P.W.7.

2. The brief facts of the case are that the petitioners are accused before the Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Vellore. The petitioners filed an application in Crl.M.P.No.1567 of 2024 in Spl.S.C.No.135 of 2022 under Section 311 of Cr.P.C., for the purpose of cross-examining P.W.1, P.W.2, P.W.3 and P.W.7. P.W.1 is the mother of the victim, P.W.2 is the victim girl, and they were examined on 13.07.2023. P.W.3 is the witness to the observation mahazar and the copies were supplied to the petitioners/accused. Subsequently, P.W.7, the doctor who examined the victim girl, was examined on 01.07.2024. However, the petitioners failed to cross-



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examined those witnesses, and after the completion of prosecution side evidence, the petitioners filed the application under Section 311 of Cr.P.C., to cross-examine P.W.1, P.W.2, P.W.3, and P.W.7. The Trial Court rejected the petition on the ground that the petitioners had engaged counsel and knew the prosecution case as early as 29.11.2022 and the petition for cross-examination was filed belatedly with the intention of either harassing the victim girl and her mother or winning them over by taking advantage of the time gap between the date of chief examination and to till this date. Against which, the petitioners have filed the present petition.

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

4. Upon perusal of the records and the submissions made by the learned counsel on either side, it is seen that at the time of cross-examination P.W.2 is 17 years, and now, she is aged about 19 years. P.W.1 is the mother of the victim girl. Therefore, this Court is not



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inclined to allow the petitioners to cross-examine them. Apart from that, the prosecution witnesses have not been cross-examined so far.

5. Though there is a bar under Section 33(5) of POCSO Act for repeated cross-examination the victim for deposition. In the present case, the petitioners have failed to demonstrate any exceptional or compelling circumstances that would justify recalling P.W.1 and P.W.2. The reasons cited in the recall petition are vague and do not meet the threshold required under Section 33(5) of the POCSO Act. Hence, this Court is not inclined to allow the petitioners to cross-examine the witnesses P.W.1 and P.W.2.

6. However, in order to give one more opportunity to putforth the defence of the petitioners. This Court is inclined to allow the petitioners to cross-examine the witnesses P.W.3 and P.W.7 alone, and also set aside the order passed by the Trial Court, to the said extent alone, and allow the petition in part. Therefore, the petitioners are permitted to cross-examine P.W.3 and P.W.7 alone.



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7. It is made clear that the Trial Court shall allow the petitioners to cross-examine those witnesses after making the payment of Rs.2,000/- as costs. Upon receipt of such payment, the Trial Court shall fix a date and if the petitioners failed to cross-examine on the said date, thereafter, the Trial Court is directed to proceed with the trial in accordance with the law.

8. With the above observations and directions, this Criminal Original Petition is partly allowed. Consequently, the connected miscellaneous petition is also closed.

20.03.2025

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

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Special Judge, for Exclusive Trial of Cases
under POCSO Act, 2012, Vellore, Vellore District.
- 2.The Inspector of Police,
All Women Police Station, Vellore,
Vellore District. (Crime No.12 of 2023)
- 2.The Public Prosecutor,
High Court, Madras.

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and
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